A/58/40 (Vol. I)

United Nations

Report
# of the Human Rights Committee

Volume I

Seventy-sixth session
(14 October-1 November 2002)

Seventy-seventh session
(17 March-4 April 2003)

Seventy-eighth session
(14 July-8 August 2003)

General Assembly
Official Records
Fifty-eighth session
Supplement No. 40 (A/58/40)

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United Nations • New York, 2003

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Summary

The present annual report covers the period from 1 August 2002 to 31 July 2003 and the seventy-sixth, seventy-seventh and seventy-eighth sessions of the Committee. Since the adoption of the last report, one State (Djibouti) became a party to the Covenant, to the Optional Protocol and to the Second Optional Protocol. South Africa became party to the Optional Protocol and Paraguay to the Second Optional Protocol, thus bringing the total of States parties to these instruments to 149, 104 and 49, respectively.

During the period under review, the Committee considered 9 periodic reports under article 40 and adopted concluding observations on them (seventy-sixth session: Egypt and Togo; seventy-seventh session: Estonia, Luxembourg and Mali; seventy-eighth session: Slovakia, Portugal, El Salvador and Israel). It further considered one country situation in the absence of a report from the State party and adopted provisional concluding observations in that respect. Under the Optional Protocol procedure, it adopted 32 Views on communications and declared 4 communications admissible and 31 inadmissible. Consideration of 21 communications was discontinued (see chapter IV below for the concluding observations and chapter V for information on Optional Protocol decisions).

On 17 March 2003, the Committee elected Abdelfattah Amor by acclamation as its Chairperson for the period 2003-2004. Rafael Rivas Posada, Sir Nigel Rodley and Roman Wieruszewski were elected Vice-Chairpersons and Ivan Shearer was elected Rapporteur.

The Committee continues to note with concern that, in general, States parties whose reports were considered during the period under review have not provided information on the issues raised in the Committee's concluding observations on their previous reports. In 2001, the Committee therefore adopted a procedure for following up on certain matters raised in its concluding observations.

At its seventy-fourth session, the Committee had adopted a number of decisions designed to spell out the modalities of following up concluding observations (see annex III, sect. A). The most important measure consists in the appointment of a Special Rapporteur for follow-up on concluding observations; Maxwell Yalden was designated as Special Rapporteur during the seventy-fifth session. During its seventy-sixth, seventy-seventh and seventy-eighth sessions, the Committee heard progress reports from Mr. Yalden. It notes with appreciation that the great majority of States parties have provided follow-up information to the Committee pursuant to rule 70, paragraph 5, of its rules of procedure.

The Committee again deplores the fact that many States parties do not comply with their reporting obligations under article 40 of the Covenant. In 2001, it therefore adopted a procedure for dealing with non-reporting States.

During its seventy-fifth and seventy-sixth sessions, the Committee applied for the first time the new procedure for dealing with non-reporting States. It considered the measures taken by the Gambia and by Suriname to give effect to the rights recognized in the Covenant, in the case of the Gambia without a report and in the absence of a delegation and in the case of Suriname in the absence of a report but the presence of a delegation. In accordance with rule 69A, paragraph 1, of its revised rules of procedure, the Committee adopted provisional concluding observations on the measures taken by these States parties to give effect to the rights

recognized in the Covenant, which were transmitted to the States parties concerned. At its seventy-eighth session, the Committee discussed the status of the provisional concluding observations on the Gambia.

The workload of the Committee under the Optional Protocol to the Covenant continued to grow during the reporting period, as demonstrated by the large number of cases registered. A total of 92 communications were registered under the Optional Protocol and by the end of the seventy-eighth session, a total of 256 communications were pending, more than ever before (see chap. V). While the Petitions Team in the Office of the High Commissioner for Human Rights has worked to ensure that the backlog in dealing with communications does not increase, the Committee reiterates that additional resources are required to guarantee the expeditious handling of communications under the Optional Protocol procedure.

The Committee again notes that many States parties have failed to implement the Views adopted under the Optional Protocol. Through its Special Rapporteur for follow-up on views, the Committee has continued to seek to ensure implementation of its Views by States parties by arranging meetings with representatives of States parties that have not responded to the Committee's request for information about the measures taken to give effect to its Views, or that have given unsatisfactory replies to its request. However, follow-up missions to the States parties concerned could again not be conducted, owing to lack of funds (see chap. VI).

During the reporting period, the Committee concluded the first reading of its revised draft general comment on article 2 of the Covenant (rights and obligations of States parties under the Covenant). It invited other treaty bodies and interested intergovernmental and non-governmental organizations to submit comments and observations on the draft. Several comments and observations had been received by the time of the adoption of the present report.

Throughout the reporting period, the Committee has contributed to the discussion prompted by the Secretary-General's proposals for reform and streamlining of the treaty body system. At its seventy-sixth session, it established an informal working group to discuss the Secretary-General's proposals and report to the plenary at the seventy-seventh session. The plenary of the seventy-seventh session adopted recommendations which, if implemented, would enable States parties to submit focused reports after two reporting cycles. The Committee was represented at a meeting on treaty body reform held at Malbun, Liechtenstein, from 5 to 7 May 2003 and at the second inter-committee meeting, held from 18 to 20 June 2003, where this matter was also given priority consideration.

CHAPTER I. JURISDICTION AND ACTIVITIES

A. States parties to the International Covenant on Civil and Political Rights

1. As at 8 August 2003, the closing date of the seventy-eighth session of the Human Rights Committee, there were 149 States parties[1] to the International Covenant on Civil and Political Rights and 104 States parties to the Optional Protocol to the Covenant.[2] Both instruments have been in force since 23 March 1976.

2. Since the last report Djibouti has become a party to the Covenant and to the Optional Protocol. In addition, South Africa became a party to the Optional Protocol.

3. As at 8 August 2003, there was no change in the number of States (47) which had made the declaration envisaged under article 41, paragraph 1, of the Covenant. In this respect, the Committee appeals to States parties to make the declaration under article 41 of the Covenant and to use this mechanism, with a view to making the implementation of the provisions of the Covenant more effective.

4. The Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty entered into force on 11 July 1991. As at 8 August 2003, there were 49 States parties to the Protocol, an increase since the Committee's last report of 2: Djibouti and Paraguay.

5. A list of States parties to the Covenant and to the two Optional Protocols, indicating those States which have made the declaration under article 41, paragraph 1, of the Covenant, is contained in annex I to the present report.

6. Reservations and other declarations made by a number of States parties in respect of the Covenant and/or the Optional Protocols are set out in the notifications deposited with the Secretary-General. On 20 June 2003, the Government of Cyprus notified the Secretary-General of the withdrawal of its reservation to article 2, paragraph 1, of the Second Optional Protocol, pursuant to which the Republic of Cyprus reserved the right to apply the death penalty in times of war pursuant to a conviction of a most serious crime of a military nature committed during wartime.

B. Sessions of the Committee

7. The Human Rights Committee held three sessions since the adoption of its previous annual report. The seventy-sixth session was held from 14 October to 1 November 2002, the seventy-seventh session was held from 17 March to 4 April 2003, and the seventy-eighth session was held from 14 July to 8 August 2003. The seventy-eighth session included one additional week for the plenary and was devoted to the consideration of communications under the Optional Protocol to the Covenant, so as to reduce the backlog of pending cases. All sessions were held at the United Nations Office at Geneva.

C. Attendance

8. Seventeen members of the Committee participated in the seventy-sixth session. All members of the Committee participated in the seventy-seventh session and 16 members in the seventy-eighth session. Four new Committee members joined the Committee at the beginning of

the seventy-seventh session: Mr. Alfredo Castillero Hoyos (Panama), Mr. Walter Kälin (Switzerland), Ms. Ruth Wedgwood (United States of America) and Mr. Roman Wieruszewski (Poland).

D. Election of officers

9. On 17 March 2003, the opening day of the seventy-seventh session, the Committee elected the following officers for a term of two years, in accordance with article 39, paragraph 1, of the Covenant:

Chairperson: Mr. Abdelfattah Amor

Vice-Chairpersons: Mr. Rafael Rivas Posada
Sir Nigel Rodley
Mr. Roman Wieruszewski

Rapporteur: Mr. Ivan Shearer

10. During its seventy-sixth through seventy-eighth sessions, the Committee held nine Bureau meetings (three per session), with interpretation. Pursuant to the decision taken at the seventy-first session, the Bureau records its decisions in formal minutes, which are kept as a record of all decisions taken.

E. Special rapporteurs

11. The Special Rapporteur on follow-up of views, Mr. Nisuke Ando, continued his functions during the reporting period. During the seventy-seventh session, Mr. Ando presented a progress report on his follow-up activities to the plenary.

12. The Special Rapporteur on new communications, Mr. Martin Scheinin, continued his functions during the reporting period. He registered 92 communications, transmitted these communications to the States parties concerned, and issued 28 decisions on interim measures of protection pursuant to rule 86 of the Committee's rules of procedure. In his capacity as Special Rapporteur, Mr. Scheinin visited the Inter-American Court of Human Rights in San José on 17 February 2003. He met with the President and judges of the Court and discussed the approaches of the Committee and the Court on the issue of interim measures of protection.

13. The Special Rapporteur on follow-up to concluding observations, Mr. Yalden, continued his functions during the reporting period. During the seventy-seventh session, he met with representatives of Croatia; during the seventy-eighth session, he met with representatives of Viet Nam and Guatemala. He presented progress reports on his activities to the plenary at the seventy-sixth, seventy-seventh and seventy-eighth sessions.

F. Working groups and country report task forces

14. In accordance with rules 62 and 89 of its rules of procedure, the Committee established a working group which met before each of its three sessions. The working group was entrusted with the task of making recommendations regarding communications received under the

Optional Protocol. The former working group on article 40, entrusted with the preparation of lists of issues concerning the initial or periodic reports scheduled for consideration by the Committee, has been replaced since the seventy-fifth session (July 2002) by country report task forces.[3] Country report task forces met during the seventy-sixth, seventy-seventh and seventy-eighth sessions to consider and adopt lists of issues on the reports of Estonia, Luxembourg, Mali, the Russian Federation, Slovakia, Portugal, El Salvador, Israel, the Philippines, Colombia, Sri Lanka and Latvia, as well as on the situation of civil and political rights in Equatorial Guinea and the Central African Republic (non-reporting States).

15. Representatives of specialized agencies and United Nations bodies (International Labour Organization, Office of the United Nations High Commissioner for Refugees, World Health Organization and United Nations Population Fund) provided advance information on several of the reports to be considered by the Committee. To that end, country report task forces also considered material submitted by representatives of a number of international and national human rights non-governmental organizations. The Committee welcomed the increasing interest shown by and the participation of these agencies and organizations and thanked them for the information provided.

16. At the seventy-sixth session (7-11 October 2002), the Working Group on Communications was composed of Mr. Bhagwati, Mr. Khalil, Mr. Lallah, Mr. Rivas Posada, Mr. Rodley, Mr. Scheinin and Mr. Solari-Yrigoyen. Mr. Rivas Posada was elected Chairman-Rapporteur.

17. At the seventy-seventh session (10-14 March 2003), the Working Group on Communications was composed of Mr. Amor, Mr. Bhagwati, Mr. Glèlè-Ahanhanzo, Mr. Rivas Posada, Mr. Rodley, Mr. Scheinin, Mr. Solari-Yrigoyen and Mr.Yalden. Mr. Scheinin was elected Chairman-Rapporteur.

18. At the seventy-eighth session (7-11 July 2003), the Working Group on Communications was composed of Mr. Amor, Mr. Bhagwati, Ms. Chanet, Mr. Glèlè-Ahanhanzo, Mr. Kälin, Mr. Rivas Posada, Mr. Scheinin, Mr. Shearer, Mr. Solari-Yrigoyen and Mr. Wieruszewski. Mr. Shearer was elected Chairman-Rapporteur.

G. Secretary-General's recommendations for reform of treaty bodies

19. In his second report on further reform of the United Nations system (A/57/387 and Corr.1), the Secretary-General invited the human rights treaty bodies to further streamline their reporting procedures and suggested that, to enable States to meet the challenges they faced under multiple reporting obligations, the States parties to the main human rights instruments be able to submit a single or consolidated report which would cover the implementation of their obligations under all the instruments they had ratified.

20. The Committee has participated in, and contributed to, the discussions which were prompted by the Secretary-General's proposals. At its seventh-sixth session, it set up an informal working group to analyse and discuss the proposals and report back to the plenary at the seventy-seventh session. On 31 March 2003 (seventy-seventh session), the plenary discussed the working group's recommendations. It did not consider the concept of a single or consolidated

report to be a viable one, but adopted a recommendation which, if implemented, would enable States parties to submit to the Committee focused reports on the basis of lists of issues transmitted previously to the States parties concerned. This system would be applied after the presentation, by the States parties concerned, of an initial and one periodic report.

21. The Committee was represented at a meeting on treaty body reform which was held at Malbun, Liechtenstein, from 4 to 7 May 2003 (see HRI/ICM/2003/4) and at the second inter-committee meeting, held from 18 to 20 June (see chapter II, paragraphs 63 and 64), where this matter was also given priority consideration.

H. Related United Nations human rights activities

22. At all of its sessions, the Committee was informed about activities of United Nations bodies dealing with human rights issues. In particular, the relevant general comments and concluding observations of the Committee on the Rights of the Child, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights and the Committee against Torture were made available to the members of the Human Rights Committee. Relevant developments in the General Assembly and the Commission on Human Rights were also discussed. The new High Commissioner for Human Rights, Mr. Sergio Vieira de Mello, addressed the seventy-sixth session of the Committee. The Acting High Commissioner, Mr. Bertrand G. Ramcharan, addressed the seventy-eighth session of the Committee.

23. The Office of the High Commissioner for Human Rights (OHCHR) and the Government of Ecuador organized the first Pilot Workshop for Dialogue on the Concluding Observations of the Human Rights Committee, held in Quito from 27 to 29 August 2002. The Workshop was attended by representatives of eight Latin American Governments, national human rights institutions, a representative of the Inter-American Commission on Human Rights, the United Nations Development Programme (UNDP), the United Nations Development Fund for Women (UNIFEM), the United Nations Population Fund (UNFPA), the Office of the United Nations High Commissioner for Refugees (UNHCR), The United Nations Educational, Scientific and Cultural Organization (UNESCO) and non-governmental organizations (NGOs). Mr. Rivas Posada and Mr. Solari-Yrigoyen represented the Committee. Participants emphasized the importance of follow-up to the Committee's recommendations made in its concluding observations, and the obligation of each State party to ensure that the recommendations are implemented. The participants adopted a set of recommendations. The report and conclusions of the meeting were subsequently issued as document HRI/TB/FU/1 (available on the OHCHR web site at www.unhchr.ch/tbs/doc.nsf/(symbol)).

24. During the seventy-seventh session, on 27 March 2003, the Committee held a meeting with the special adviser to the Counter-Terrorism Committee (CTC) of the United Nations Security Council, Ambassador Curtis Ward. Ambassador Ward briefed the Committee on the activities and the mandate of CTC. While CTC had no direct remit to address human rights issues, the Secretary-General's statement to the Committee to the effect that there can be no tradeoffs between measures designed to combat terrorism and protection of fundamental

rights, and the ministerial declaration to the same effect attached to Security Council resolution 1456 (2003), had led to growing awareness among members of CTC that it was important to take into account human rights concerns when examining reports submitted by States pursuant to Security Council resolution 1373 (2001).

25. Ambassador Ward further stated that treaty bodies were free to distil relevant passages from reports submitted to CTC and engage the States concerned on those issues when they appeared before the treaty bodies. The latter should also explore the possibility of offering, together with or through OHCHR, technical assistance to States having expressed an interest in adopting counter-terrorism legislation, with a view to ensuring the compatibility of such legislation with international human rights standards. Finally, the secretariats of CTC and the Committee should be invited to share relevant information.

26. The Committee welcomes the establishment of a dialogue with CTC and encourages a regular exchange of information between its secretariat and that of CTC. It notes with satisfaction that Sir Nigel Rodley was invited to address CTC on the Committee's behalf on 17 June 2003.

27. On 31 July 2003, the Committee held consultations with members of the International Law Commission on the issue of reservations to multilateral treaties. It welcomes the constructive and open dialogue with the International Law Commission and expresses the hope that further consultations on the issue of reservations will be organized.

I. Meeting with States parties

28. On 24 October 2002, during its seventy-sixth session, the Committee held its second meeting with States parties to the Covenant. The meeting focused on the following themes:

(a) New working methods: the Committee's procedure for dealing with non-reporting States and its experience with the consideration of country situations in the absence of a report and a delegation; and the establishment of country report task forces for lists of issues and the examination of reports;

(b) The difficulties encountered by many States parties in meeting their reporting obligations - challenges and possible solutions; and

(c) The new procedures for following up on concluding observations.

29. The meeting was attended by representatives of 60 States parties. All State party representatives and Committee members agreed that the dialogue was constructive and had covered a broad range of issues. Several State representatives underlined the importance of studying the link between the failure of many States to meet reporting obligations and technical assistance. Technical cooperation should be offered to those States that experience difficulties in meeting their reporting obligations. Training on reporting should be considered a priority by OHCHR. Reminders to States whose reports are overdue should consistently draw their attention to the possibility of requesting technical assistance.

30. The majority of State party representatives supported the Committee's new procedure for dealing with non-reporting States and the establishment of country report task forces for the examination of reports. Several participants pointed to the need to establish clear guidelines and objective criteria for the selection of non-reporting States whose situation would be examined by the Committee. Committee members replied that the new procedure was designed to maintain a constructive dialogue with all States parties. Priority would be given to non-reporting States whose reports were most overdue. Other State representatives noted that country report task forces should be balanced in their composition, so as to dispel any suspicion of "political interest".

31. Mr. Yalden, the new Special Rapporteur for follow-up on concluding observations, gave an overview of the new follow-up procedure. State representatives welcomed the organization of the Quito workshop (see paragraph 23 above) and expressed the hope that its recommendations would be taken into consideration by States parties, the Committee and OHCHR alike. In reply to concerns expressed that the new procedure would amount to an additional burden for States, the Special Rapporteur underlined that the new procedure was designed to reduce the reporting burden on States by allowing them to focus on several priority issues and concerns identified by the Committee.

J. Derogations pursuant to article 4 of the Covenant

32. Article 4, paragraph 1, of the Covenant stipulates that in time of public emergency, States parties may take measures derogating from certain of their obligations under the Covenant. Pursuant to paragraph 2, no derogation is allowed from articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18. Pursuant to paragraph 3, any derogation must be immediately notified to the States parties through the intermediary of the Secretary-General. A further notification is required upon the termination of the derogation.

33. In cases of derogation the Committee considers whether the State party has satisfied the conditions of article 4 of the Covenant and, in particular, insists that the derogation be terminated as soon as possible. When faced with situations of armed conflict, both external and internal, which affect States parties to the Covenant, the Committee will necessarily examine whether these States parties are complying with all of their obligations under the Covenant. On the interpretation of article 4 of the Covenant, reference is made to the Committee's practice under the reporting and the Optional Protocol procedures. The Committee's general comment No. 29, adopted during the seventy-second session, establishes guidelines that States parties are required to respect during a state of emergency.[4]

34. For States parties to the Covenant, the continued practice of derogations has frequently been a subject of discussion in the context of the consideration of State party reports under article 40 of the Covenant and has often been identified as a matter of concern in the concluding observations, including some of those adopted during the reporting period. While not questioning the right of States parties to derogate from certain obligations in states of emergency, in conformity with article 4 of the Covenant, the Committee always urges States parties to withdraw the derogations as soon as possible.

35. For States parties to the Optional Protocol, the Committee has considered derogations in the context of the consideration of individual communications. The Committee has consistently given a strict interpretation to derogations and, in some cases, has determined that notwithstanding the derogation the State was responsible for violations of the Covenant.

36. During the period under review, the Government of Colombia notified other States parties, through the intermediary of the Secretary-General, on 13 August 2002, of the adoption of Decree No. 1837 of 11 August 2002, which declared a state of internal disturbance throughout the national territory, and the adoption of Decree No. 1838 of 11 August 2002, which introduced a special tax to meet the necessary expenditure under the country's general budget to maintain democratic security.

37. Decree No. 2555 of 8 November 2002, notified to the Secretary-General on the same day, extended the state of internal disturbance declared by Decree No. 1837 for 90 calendar days, with effect from 9 November 2002. Decree No. 245 of 5 February 2003, notified to the Secretary-General on 12 February 2003, provided for the second extension of the declaration of internal disturbance.

38. On 13 March 2003, the Government of Serbia and Montenegro notified other States parties, through the intermediary of the Secretary-General, of the adoption, by the Acting President on 12 March 2003, of a decision and order declaring a state of emergency for the territory of the State, following the assassination of Serbian Prime Minister Zoran Djindjic. The order, concerning special measures to be applied during the state of emergency, provided for the derogation from rights protected under articles 9, 12, 14, 17, 19, 21 and 22, paragraph 2, of the Covenant.

39. On 24 April 2003, the Secretary-General was informed of the proclamation, on 23 April 2003, of Decision No. 29, which declared the termination of the state of emergency in Serbia and Montenegro.

40. On 30 May 2003, the Government of Peru notified other States parties, through the intermediary of the Secretary-General, of the declaration of a state of emergency applicable to the national territory for a period of 30 days, with effect from 29 May 2003. The declaration of the state of emergency provided for the derogation from rights protected under articles 9, 12, 17 and 21 of the Covenant and articles 9, 11, 12 and 24 (f) of the Peruvian Constitution.

K. General comments under article 40, paragraph 4, of the Covenant

41. At the Committee's seventy-fourth session, Sir Nigel Rodley submitted an initial draft of a general comment on article 2 (nature of the legal obligations imposed on States parties to the Covenant), which was discussed during that session. A revised draft presented by the rapporteur was discussed during the seventy-sixth and seventy-seventh sessions of the Committee, and the first reading of the draft concluded during the seventy-seventh session. In line with the decision of the Committee's Bureau of 20 March 2002, the draft general comment was circulated for comments and observations to the other treaty bodies and other interested intergovernmental and non-governmental organizations. Several observations and comments had been received by the time of the adoption of the present report.

L. Staff resources

42. The Committee has welcomed the launch of the Global Plan of Action for the Geneva-based human rights treaty bodies and the creation of a petitions team. It notes with satisfaction that three project posts for the Petitions Team were advertised and filled during the reporting period, and that a senior-level regular budget position for the team has been approved. The Committee hopes that these developments will help to improve further the services provided to the Committee. It notes that measures have been taken to further reduce the backlog of communications; in addition, measures have been taken to process with the requisite urgency and expediency particular categories of communications. The Committee further notes with satisfaction that the activities of the follow-up officer appointed in 2002 have assisted it and its Special Rapporteur for follow-up on concluding observations with the implementation of the new procedure for follow-up on concluding observations.

43. While the Committee is encouraged by the results of the Global Plan of Action and the work of the Petitions Team, it reiterates the need for sufficient and experienced Professional and other staff to be allocated to all aspects of its work. As the Plan of Action depends on extrabudgetary contributions made by donors, its time frame and its effects may be limited. Ultimately, only the provision of several additional regular budget posts will guarantee the Committee's ability to discharge its responsibilities properly and in a timely manner.

M. Emoluments of the Committee

44. The Committee has noted with concern that the emoluments for its members provided for in article 35 of the Covenant have been reduced by General Assembly resolution 56/272 to the symbolic amount of US$ 1. It decided to keep this matter under review.

N. Publicity for the work of the Committee

45. The Chairperson, accompanied by members of the Bureau, met with the press after each of the Committee's three sessions held during the reporting period. The Committee notes that with the exception of academic institutions (see paragraph 48 below), awareness of its activities still remains unsatisfactory and that publicity must be enhanced to reinforce the protection mechanisms under the Covenant.

46. In this context, the Committee notes with satisfaction that the former practice of issuing press releases summarizing its final decisions under the Optional Protocol after the end of each session was resumed after the Committee's seventy-fifth session (July 2002). During the seventy-eighth session, the Committee's Bureau met with an official of the new External Relations Branch of OHCHR and discussed options for increasing publicity of the Committee's work.

O. Documents and publications relating to the work of the Committee

47. The Committee continued to be concerned about the difficulties it faced in regard to the late issuance of Committee documents, particularly reports by States parties, as a consequence of delays in editing and translation. In this connection, the Committee noted that pursuant to its recommendation, made during its sixty-sixth session, reports of States parties, whenever

possible, are now submitted for translation without editing, and that this practice has reduced the delay in issuing reports. On the other hand, several reports examined during the reporting period once again only became available in one or more of the Committee's working languages shortly before their examination.

48. The Committee continued to be concerned that the summary records of the Committee meetings are issued only after considerable delay; summary records from the New York meetings have sometimes been issued after a lapse of, at times, close to three years.

49. The Committee welcomes the publication, after a long delay, of Volume 3 of the Selected Decisions under the Optional Protocol. It notes with appreciation that editing of Volume 4 has been completed and expresses the hope that this volume will be issued before the end of 2003. The Committee welcomes the work plan drawn up by its secretariat, under which work on other volumes of the Selected Decisions has been scheduled with a view to bringing the publication of the Selected Decisions up to date by the middle of 2005.

50. The Committee welcomes the publication of its decisions under the Optional Protocol in the databases of various universities, including the University of Minnesota, United States of America (http://www1.umn.edu/humanrts/undocs/undocs.htm), and the publication of a case-law digest of the Committee's jurisprudence under the Optional Protocol by the University of Utrecht, Netherlands (SIM documentation site, http://sim.law.uu.nl/SIM/Dochome.nsf). Moreover, the Committee notes with satisfaction that its work is becoming better known thanks to initiatives taken by the United Nations Development Programme (UNDP) and the Department of Public Information of the Secretariat. The Committee also appreciates the growing interest in its work shown by universities and other institutions of higher learning. It recommends that the treaty body database of the OHCHR web site (www.unhchr.ch) be equipped with adequate search functions.

P. Future meetings of the Committee

51. At its seventy-seventh session, the Committee confirmed the following schedule of future meetings, to be held at the United Nations Office at Geneva and at United Nations Headquarters, in 2003 and 2004: the seventy-ninth session, from 20 October to 7 November 2003; the eightieth session, from 15 March to 2 April 2004; the eighty-first session from 12 to 30 July 2004; and the eighty-second session, from 18 October to 5 November 2004. During its seventy-seventh session, the Committee requested that its eightieth session be held at United Nations Headquarters; during the seventy-eighth session, it was confirmed that this would be the case.

Q. Adoption of the report

52. At its 2122nd meeting, held on 29 July 2003, the Committee considered the draft of its twenty-seventh annual report, covering its activities at its seventy-sixth, seventy-seventh and seventy-eighth sessions, held in 2002 and 2003. The report, as amended in the course of the discussion, was adopted unanimously. By virtue of its decision 1985/105 of 8 February 1985, the Economic and Social Council authorized the Secretary-General to transmit the Committee's annual report directly to the General Assembly.

Notes

[1] The Covenant continues to apply by succession in one other State, Kazakhstan (see note (d) to annex I below).

[2] Although as of the date of the present report there were 104 States parties to the Optional Protocol, the Committee is competent to consider communications concerning 106 States, including 2 former States parties that have denounced the Optional Protocol pursuant to article 12. These countries are Jamaica, which denounced the Optional Protocol on 23 October 1997, with effect from 23 January 1998, and Trinidad and Tobago, which denounced the Optional Protocol on 27 March 2000, with effect from 27 June 2000. Thus, three communications concerning Jamaica which had been submitted prior to 23 January 1998 and three communications concerning Trinidad and Tobago which had been submitted prior to 27 June 2000 are still under consideration by the Committee.

[3] See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40* (A/57/40), vol. I, chap. II, para. 56 and annex III, sect. B.

[4] Ibid., *Fifty-sixth Session, Supplement No. 40* (A/56/40), vol. I, annex VI.

CHAPTER II. METHODS OF WORK OF THE COMMITTEE UNDER ARTICLE 40 OF THE COVENANT: NEW DEVELOPMENTS

53. The present chapter summarizes and explains the modifications introduced by the Committee to its working methods under article 40 of the Covenant in recent years, as well as recent decisions adopted by the Committee on follow-up to its concluding observations on State party reports.

A. Recent developments and decisions on procedures

54. In March 1999, the Committee decided that the lists of issues for the examination of States parties' reports should henceforth be adopted at the session prior to the examination of the report, thereby allowing a period of at least two months for States parties to prepare for the discussion with the Committee. Central to the consideration of States parties' reports is the oral hearing, where the delegations of States parties have the opportunity to answer specific questions from Committee members. Thus, States parties are encouraged to use the list of issues to better prepare for a constructive discussion, but are not required to submit written answers. This practice was put into effect in mid-1999.

55. In October 1999, the Committee adopted new consolidated guidelines on State party reports, which replaced all previous guidelines and which are designed to facilitate the preparation of initial and periodic reports by States parties. The guidelines provide for comprehensive initial reports prepared on an article-by-article basis, and focused periodic reports geared primarily to the Committee's concluding observations on the previous report of the State party concerned. In their periodic reports, States parties need not report on every article of the Covenant, and should concentrate on those provisions identified by the Committee in its concluding observations and those articles in respect of which there have been significant developments since the submission of the previous report. The revised consolidated guidelines were issued as document CCPR/C/66/GUI/Rev.2 on 26 February 2001.[1]

56. For several years, the Committee has expressed concern about the number of overdue reports and non-compliance by States parties with their obligations under article 40 of the Covenant.[2] Two working groups of the Committee which met during the sixty-eighth to seventy-first sessions proposed amendments to the rules of procedure, which are aimed at helping States parties to fulfil their reporting obligations and designed to simplify the procedure. These amendments were formally adopted during the seventy-first session, and the revised rules of procedure were issued as document CCPR/C/3/Rev.6 and Corr.1.[3] All States parties were informed of the amendments to the rules of procedure, and the Committee has applied the revised rules since the end of the seventy-first session (April 2001). The Committee recalls that general comment No. 30, adopted at the seventy-fifth session, spells out the States parties' obligations under article 40 of the Covenant.[4]

57. The amendments introduce procedures for dealing with situations of States parties that have failed to honour their reporting obligations for a long time, or that have chosen to request a postponement of their scheduled appearance before the Committee at short notice. In both situations, the Committee may henceforth serve notice on the States concerned that it intends to examine, from material available to it, the measures adopted by that State party with a view to

giving effect to the provisions of the Covenant, even in the absence of a report. The amended rules of procedure further introduce a follow-up procedure to the concluding observations of the Committee: rather than fixing a set time limit for its next report in the last paragraph of the concluding observations, the State party will be requested to report back to the Committee within a specified period with responses to the Committee's recommendations, indicating what steps, if any, it has taken to give effect to the recommendations. Such responses will thereafter be examined by the Special Rapporteur for follow-up on concluding observations, and result in the determination of a definitive time limit for the presentation of the next report. Since the seventy-sixth session, the Committee has examined the progress reports submitted by the Special Rapporteur on a sessional basis.

58. The Committee first applied the new procedure to a non-reporting State at its seventy-fifth session. It examined the measures taken by the Gambia to give effect to the rights recognized in the Covenant without a report, and in the absence of a delegation from the State party. It adopted provisional concluding observations on the situation of civil and political rights in the Gambia, which were transmitted to the State party. At the seventy-eighth session, the Committee discussed the status of the provisional concluding observations on the Gambia and requested the State party to submit a periodic report by 1 July 2004 that should specifically address the concerns identified in the Committee's provisional concluding observations. Failure to submit such a report within the deadline set by the Committee would result in the conversion of the provisional concluding observations into final ones, and their general dissemination. On 8 August 2003, the Committee amended rule 69A of its rules of procedure to provide for the possibility of converting provisional concluding observations into final and public ones (see annex III). At its seventy-sixth session (October 2002), the Committee examined the situation of civil and political rights in Suriname, in the absence of a report but this time in the presence of a delegation. Provisional concluding observations were transmitted to the State party, which pledged to submit a full report which would take the Committee's concerns into consideration. At its seventy-fourth session, the Committee adopted decisions which spell out the modalities for following up on concluding observations.[5] At the seventy-fifth session, the Committee designated Mr. Yalden as its new Special Rapporteur for follow-up on concluding observations.

59. Also at the seventy-fourth session, the Committee adopted a number of decisions on working methods designed to streamline the procedure for the examination of reports under article 40.[6] The principal innovation consists in the establishment of country report task forces, consisting of no fewer than four and no more than six Committee members, who will have the main responsibility for the conduct of debates on a State party report. The Committee hopes that the establishment of these country report task forces will enhance the quality of the dialogue with delegations during the examination of State party reports. The first country report task forces were convened during the seventy-fifth session. The majority of State party representatives welcomed the establishment of country report task forces during the second meeting with States parties to the Covenant on 24 October 2002 (see paragraph 28 above).

B. Concluding observations

60. Since its decision of 24 March 1992 (forty-fourth session),[7] the Committee has been adopting concluding observations. The Committee takes the concluding observations as a starting point in the preparation of the list of issues for the examination of the subsequent State

party report. In some cases, the Committee has received comments on its concluding observations and replies to the concerns identified by the Committee under rule 70, paragraph 5, of its rules of procedure from the States parties concerned, which are issued in document form. During the period under review such comments and replies were received from Azerbaijan, Georgia, the Czech Republic, the United Kingdom of Great Britain and Northern Ireland, Switzerland, Monaco, the Netherlands, Hungary, Croatia, Viet Nam and Guatemala. These State party replies have been issued as documents and are available from the Committee's secretariat, or may be consulted on the OHCHR web site (www.unhchr.ch, treaty body database, documents, category "concluding observations"). Chapter VII of the present report summarizes activities relating to follow-up to concluding observations and States parties' replies.

C. Links to other human rights treaties and treaty bodies

61. The Committee continues to find value in the meeting of persons chairing the human rights treaty bodies as a forum for the exchange of ideas and information on procedures and logistical problems, streamlining of working methods, improved cooperation among treaty bodies, and the necessity of obtaining adequate secretariat services to enable all treaty bodies to fulfil their mandates effectively.

62. The fifteenth meeting of treaty body chairpersons was convened in Geneva from 23 to 27 June 2003. The Committee was represented by the Chairperson, Mr. Amor. The chairpersons met with, among others, the Bureau of the Commission on Human Rights, special rapporteurs, independent experts and chairpersons of working groups of the Commission on Human Rights, and representatives of States parties to the six main United Nations human rights instruments. They discussed the outcome of the second inter-committee meeting (see paragraph 64 below) and adopted recommendations relating to the issue of treaty body reform and the Secretary–General's proposals (see chapter I, section G). In particular, they recommended that the third inter-committee meeting, to be held in 2004, should examine draft guidelines for an expanded core document to be submitted by all States parties to the principal United Nations human rights instruments.

63. The meeting also recommended that treaty bodies should harmonize their approaches to pre-sessional working groups and lists of issues; that the Office of the High Commissioner for Human Rights and the Division for the Advancement of Women should strengthen collaboration and coordination, especially with a view to strengthening capacity-building efforts; that the Commission on Human Rights consider including an interactive dialogue with treaty body chairpersons in the agenda of the sixtieth session of the Commission in 2004; and that each treaty body should implement measures to enhance the accuracy of press releases.

64. The second inter-committee meeting was held in Geneva from 18 to 20 June 2003. It brought together representatives from each of the human rights treaty bodies. The Committee was represented by Mr. Amor, Mr. Solari-Yrigoyen and Mr. Yalden. Discussions focused on the Secretary-General's proposals for treaty body reform and the treaty bodies' reactions to those proposals.

65. The meeting shared the concerns and objectives of the Secretary-General contained in his report, in particular with regard to strengthening the implementation of human rights obligations at the domestic level. It agreed that the proposal that each State be allowed to produce a single report summarizing its adherence to the full range of international human rights instruments to which it is a party would not meet these overriding concerns and objectives. Rather, those objectives could be better met by requiring States parties to the various instruments to prepare an expanded core document, which would be updated regularly, as well as treaty-specific targeted periodic reports to each treaty body. The meeting recommended that the secretariat should prepare draft guidelines for an expanded core document, for consideration by each Committee and adoption by the third inter-committee meeting in 2004. Such guidelines should focus on substantive human rights issues relating to provisions contained in some or all human rights instruments. The meeting finally recommended that, having regard to the specificity of each treaty, the secretariat should study the possibilities for greater harmonization of the reporting guidelines for each of the treaty bodies.

D. Cooperation with other United Nations bodies

66. In 1999, the Committee considered its participation in the initiative emerging from the memorandum of understanding signed by the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme (UNDP) on cooperation over a wide range of human rights issues and activities. The Committee welcomed the fact that, in its development programmes and, in particular, those relating to technical assistance, UNDP takes account of the Committee's conclusions arising from its consideration of State party reports. While the indicators, i.e. quantitative and qualitative criteria for assessing compliance by States parties with the provisions of human rights treaties and for a State party's capacity for good governance, do not as yet include many rights guaranteed by the International Covenant on Civil and Political Rights, the Committee intends to play its part in refining and developing these indicators so that United Nations resources may be more effectively targeted.

Notes

[1] The *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40* (A/56/40), vol. I, annex III, sect. A.

[2] See ibid., chap. III, sect. B and *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40* (A/57/40), chap. III, sect. B.

[3] See ibid., *Fifty-sixth Session, Supplement No. 40* (A/56/40), vol. I, annex III, sect. B.

[4] See ibid., *Fifty-seventh Session, Supplement No. 40* (A/57/40), vol. I, annex VI.

[5] See ibid., vol. I, annex II, sect. A.

[6] See ibid., vol. I, annex III, sect. B.

[7] See ibid., *Forty-seventh Session, Supplement No. 40* (A/47/40), chap. I, sect. E, para. 18.

CHAPTER III. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

67. Under article 2, paragraph 1, of the International Covenant on Civil and Political Rights, each State party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant. In connection with this provision, article 40, paragraph 1, of the Covenant requires States parties to submit reports on the measures adopted and the progress achieved in the enjoyment of the various rights and on any factors and difficulties that may affect the implementation of the Covenant. States parties undertake to submit reports within one year of the entry into force of the Covenant for the State party concerned and, thereafter, whenever the Committee so requests. Under the Committee's current guidelines, adopted at the sixty-sixth session and amended at its seventieth session (CCPR/C/GUI/66/Rev.2), the five-year periodicity in reporting, which the Committee itself had established at its thirteenth session in July 1981 (CCPR/C/19/Rev.1), was replaced by a flexible system whereby the date for the subsequent periodic report by a State party is set on a case-by-case basis at the end of the Committee's concluding observations on any report, in accordance with article 40 of the Covenant and in the light of the guidelines for reporting and the working methods of the Committee.

A. Reports submitted to the Secretary-General from August 2002 to July 2003

68. During the period covered by the present report, 13 reports under article 40 were submitted to the Secretary-General by the following States parties: Belgium (fourth periodic); Colombia (fifth periodic); Finland (sixth periodic); Germany (fifth periodic); Latvia (second periodic); Liechtenstein (initial); Lithuania (second periodic); Philippines (second periodic); Russian Federation (fifth periodic); Serbia and Montenegro (initial); Sri Lanka (fourth periodic); Suriname (second periodic); and Uganda (combined initial to third periodic).

B. Overdue reports and non-compliance by States parties with their obligations under article 40

69. States parties to the Covenant must submit the reports referred to in article 40 of the Covenant on time so that the Committee can duly perform its functions under that article. Those reports are the basis for the discussion between the Committee and States parties on the human rights situation in States parties. Regrettably, serious delays have been noted since the establishment of the Committee.

70. The Committee is faced with a problem of overdue reports, which has continued to grow notwithstanding the Committee's new reporting guidelines and other significant improvements in its working methods. The Committee has agreed that more than one periodic report submitted by a State party may be considered jointly. It has further accepted the submission of initial and/or periodic reports which combine two or more overdue reports in a single document. The Committee does not, however, encourage the practice of combining overdue reports. With the adoption of the new guidelines, the date for the submission of the next periodic report is stated in the concluding observations.

71. The Committee notes with concern that the failure of States parties to submit reports hinders the Committee in the performance of its monitoring functions under article 40 of the Covenant. The Committee lists below the States parties that have a report more than five years overdue, as well as those that have not submitted reports requested by a special decision of the Committee. The Committee reiterates that these States are in serious default of their obligations under article 40 of the Covenant.

States parties that have reports more than five years overdue (as at 31 July 2003) or that have not submitted a report requested by a special decision of the Committee

State party	Type of report	Date due	Years overdue
Gambia	Second	21 June 1985	18
Kenya	Second	11 April 1986	17 (has indicated that report is in preparation)
Mali	Second	11 April 1986	17
Equatorial Guinea	Initial	24 December 1988	14
Central African Republic	Second	9 April 1989	14
Barbados	Third	11 April 1991	12
Somalia	Initial	23 April 1991	12
Nicaragua	Third	11 June 1991	12
Democratic Republic of the Congo	Third	31 July 1991	11 (has indicated that report would be submitted by end of 2003)
Saint Vincent and the Grenadines	Second	31 October 1991	11
San Marino	Second	17 January 1992	11
Panama	Third	31 March 1992	11
Rwanda	Third	10 April 1992	11
Madagascar	Third	31 July 1992	10
Grenada	Initial	5 December 1992	10
Albania	Initial	3 January 1993	10
Bosnia and Herzegovina	Initial	5 March 1993	10
Benin	Initial	11 June 1993	10
Côte d'Ivoire	Initial	25 June 1993	10
Seychelles	Initial	4 August 1993	9
Angola	Initial/Special	31 January 1994	9
Niger	Second	31 March 1994	9
Afghanistan	Third	23 April 1994	9
Ethiopia	Initial	10 September 1994	8
Dominica	Initial	16 September 1994	8
Guinea	Third	30 September 1994	8
Mozambique	Initial	20 October 1994	8
Cape Verde	Initial	5 November 1994	8
Bulgaria	Third	31 December 1994	8
Islamic Republic of Iran	Third	31 December 1994	8
Malawi	Initial	21 March 1995	8

State party	Type of report	Date due	Years overdue
Namibia	Initial	27 February 1996	7
Burundi	Second	8 August 1996	6
Chad	Initial	8 September 1996	6
Haiti	Initial	30 December 1996	6
Jordan	Fourth periodic	27 January 1997	6
Malta	Initial	12 December 1996	6
Slovenia	Second periodic	24 June 1997	6
Belize	Initial	9 September 1997	5
Brazil	Second	23 April 1998	5
Mauritius	Fourth	30 June 1998	5
Nepal	Second	13 August 1997	5
Thailand	Initial	28 January 1998	5
Tunisia	Fifth	4 February 1998	5
Turkmenistan	Initial	31 July 1998	5
Zambia	Third	30 June 1998	5

72. The Committee once again draws particular attention to 34 initial reports which have not yet been presented (including the 21 overdue initial reports listed above). The result is to frustrate a major objective of the Covenant, which is to enable the Committee to monitor compliance by States parties with their obligations under the Covenant, on the basis of States parties' reports. At its seventy-eighth session, the Committee agreed to send reminders to all those States parties whose reports are significantly overdue, and to issue a press release on the subject.

73. The Committee noted that in the period under review, two States parties (Israel and the Russian Federation) informed the Committee that their delegations were unable to appear before the Committee as initially scheduled, owing to exceptional circumstances, and requested a postponement. The Committee regrets such withdrawal by States parties from the scheduled examination of a report, especially at a late stage; it is rarely possible for the Committee to schedule on short notice the examination of any other report. At its seventy-eighth session, therefore, the Committee decided that it would henceforth proceed with the examination of a report in the absence of a State party delegation if that State party informs the Committee at a late stage of its withdrawal, without providing justifications. The new procedure was notified to all States parties by circular letter of 14 July 2003.

74. With respect to the circumstances that are set out in chapter II, paragraphs 56 and 57, the amended rules of procedure now enable the Committee to consider the compliance by States parties that have failed to submit reports under article 40, or that have requested a postponement of their scheduled appearance before the Committee.

75. At its 1860th meeting, on 24 July 2000, the Committee decided to request Kazakhstan to present its initial report by 31 July 2001, notwithstanding the fact that no instrument of succession or accession has been received from Kazakhstan following its independence. By the time of the adoption of the present report, the initial report of Kazakhstan had still not been received. The Committee once again invites the Government of Kazakhstan to submit its initial report under article 40 at its earliest convenience.

CHAPTER IV. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

76. The following sections, arranged on a country-by-country basis in the sequence followed by the Committee in its consideration of the reports, contain the concluding observations adopted by the Committee with respect to the States parties' reports considered at its seventy-sixth, seventy-seventh and seventy-eighth sessions. The Committee urges those States parties to adopt corrective measures consistent with their obligations under the Covenant and to implement these recommendations.

77. Egypt

(1) The Committee considered the third and fourth periodic reports of Egypt, (CCPR/C/EGY/2001/3) at its 2048th and 2049th meetings, held on 17 and 18 October 2002 (CCPR/C/SR.2048 and CCPR/C/SR.2049), and adopted the following concluding observations at its 2067th meeting (CCPR/C/SR.2067) on 31 October 2002.

Introduction

(2) The Committee welcomes the third and fourth periodic reports of Egypt, although it regrets the seven-year delay in the submission of the third periodic report and points out that conflating two reports into one should be avoided in the future. It is nevertheless pleased to have been able to resume a dialogue with the State party, since eight years have passed since its consideration of the previous report. It notes that the report contains useful information about domestic legislation relating to the implementation of the Covenant and on developments in some legal and institutional fields since the second periodic report was considered. It regrets, however, the lack of information on case law and practical aspects of implementing the Covenant. It does welcome the willingness to cooperate voiced by the Egyptian delegation and, in particular, the transmission, at the Committee's request, of written replies dated 22 October 2002 to oral questions raised during the examination of the report.

Positive aspects

(3) The Committee welcomes some initiatives taken by the State party in recent years as regards human rights, in particular the creation of human rights divisions within the ministries of justice and foreign affairs and the introduction of human rights training and awareness programmes at schools and universities for law-enforcers and society at large. It also notes some improvements in the status of women and welcomes the creation of the National Council for Women and the introduction of legal reforms, in particular the passage of Act No. 1 of 2000, allowing women to end marriages unilaterally, and Act No. 14 of 1999, revoking an earlier law which offered the accused the opportunity to escape liability for abduction and rape if he married the victim.

Principal subjects of concern and recommendations

(4) The Committee regrets the lack of clarity surrounding the question of the legal standing of the Covenant in relation to domestic law and the attendant consequences.

The State party should ensure that its legislation gives full effect to the rights recognized in the Covenant and that effective remedies are available for the exercise of those rights.

(5) While observing that the State party considers the provisions of the Islamic Shariah to be compatible with the Covenant, the Committee notes the general and ambiguous nature of the declaration made by the State party upon ratifying the Covenant.

The State party should either clarify the scope of its declaration or withdraw it.

(6) The Committee is disturbed by the fact that the state of emergency proclaimed by Egypt in 1981 is still in effect, meaning that the State party has been in a semi-permanent state of emergency ever since.

The State party should consider reviewing the need to maintain the state of emergency.

(7) While welcoming the steps taken by the authorities in recent years to encourage participation by women in public life (in the diplomatic service, for example), the Committee notes that women are underrepresented in most areas of the public sector (for instance, the magistrature) and in the private sector (articles 3 and 26 of the Covenant).

The State party is encouraged to step up its efforts to secure greater participation by women at all levels of society and the State, including decision-making positions, inter alia by ensuring that women in rural areas learn to read and write.

(8) The Committee notes with concern that women seeking divorce through unilateral repudiation by virtue of Act No. 1 of 2000 must forgo their rights to financial support and, in particular, to their dowries (articles 3 and 26 of the Covenant).

The State party should review its legislation so as to eliminate financial discrimination against women.

(9) The Committee notes the discriminatory nature of some provisions in the Penal Code, which do not treat men and women equally in matters of adultery (articles 3 and 26 of the Covenant).

The State party should review its discriminatory penal provisions in order to conform to articles 3 and 26 of the Covenant.

(10) The Committee draws attention to the discrimination affecting women as regards transmission of nationality to their children when their spouses are not Egyptian and as regards the rules governing inheritance (articles 3 and 26 of the Covenant).

The State party is encouraged to bring its current inquiries to a conclusion and do away with all discrimination between men and women in its domestic legislation.

(11) While taking note of the action and awareness campaigns against female genital mutilation, the Committee notes that this practice still continues (article 7 of the Covenant).

> **The State party should eradicate the practice of female genital mutilation.**

(12) The Committee notes with concern the very large number of offences which, under Egyptian law, are punishable by the death penalty, and the incompatibility of certain of those offences with article 6, paragraph 2, of the Covenant.

> **The State party should review the question of the death penalty in the light of the provisions of article 6 of the Covenant. The State party is also asked to provide the Committee with detailed information on the number of offences which carry the death penalty, the number of people sentenced to death, the number of those executed, and the number of sentences commuted since 2000. The Committee calls on the State party to bring its legislation and practice into line with the Covenant. The Committee recommends that Egypt take measures to abolish the death penalty.**

(13) While noting the creation of institutional machinery and the introduction of measures to punish any violations of human rights by employees of the State, the Committee notes with concern the persistence of torture and cruel, inhuman or degrading treatment at the hands of law-enforcement personnel, in particular the security services, whose recourse to such practices appears to display a systematic pattern. It is equally concerned at the general lack of investigations into such practices, punishment of those responsible, and reparation for the victims. It is also concerned at the absence of any independent body to investigate such complaints (articles 6 and 7 of the Covenant).

> **The State party should ensure that all violations of articles 6 and 7 of the Covenant are investigated and, depending on the results of investigations, should take action against those held responsible and make reparation to the victims. It should also set up an independent body to investigate such complaints. The State party is invited to provide detailed statistics in its next report on the number of complaints lodged against State employees, the nature of the offences alleged, the State services implicated, the number and nature of the inquiries launched, the action taken and the reparations made to the victims.**

(14) The Committee regrets the lack of clarity about the law and practice in matters of detention in custody: the duration of such detention, and access to a lawyer during such detention. It points out that it has been given no information on the total duration of pre-trial detention or the offences involved. It is concerned at the lack of clarity concerning the safeguards laid down in article 9, paragraph 3, of the Covenant. The Committee also notes the persistent occurrence of cases of arbitrary detention.

> **The State party is requested to elaborate on the compatibility of its legislation and practice in matters of detention in custody and pre-trial detention with article 9 of the Covenant.**

(15) While noting the explanations given by the delegation of the State party about the periodic and spontaneous inspections of prison establishments by the authorities, the Committee notes that detention conditions inconsistent with article 10 of the Covenant persist. It also regrets the impediments to visits by United Nations-instituted treaty and non-treaty human rights mechanisms and non-governmental human rights organizations.

> **The State party is invited to provide the Committee in its next report with statistics on the number of people set free as a result of inspections. It is also encouraged to permit intergovernmental and non-governmental visits and ensure that, in actual practice, article 10 of the Covenant is strictly respected.**

(16) While understanding the security requirements associated with efforts to combat terrorism, the Committee voices concern at their effects on the human rights situation in Egypt, particularly in relation to articles 6, 7, 9 and 14 of the Covenant.

(a) The Committee considers that the effect of the very broad and general definition of terrorism given in Act No. 97 of 1992 is to increase the number of offences attracting the death penalty in a way that runs counter to the sense of article 6, paragraph 2, of the Covenant.

(b) The Committee notes with alarm that military courts and State security courts have jurisdiction to try civilians accused of terrorism although there are no guarantees of those courts' independence and their decisions are not subject to appeal before a higher court (article 14 of the Covenant).

(c) The Committee notes furthermore that Egyptian nationals suspected or convicted of terrorism abroad and expelled to Egypt have not benefited in detention from the safeguards required to ensure that they are not ill-treated, having notably been held incommunicado for periods of over one month (articles 7 and 9 of the Covenant).

> **The State party must ensure that steps taken in the campaign against terrorism are fully in accordance with the Covenant. It should ensure that legitimate action against terrorism does not become a source of violations of the Covenant.**

(17) The Committee is concerned about infringements of the right to freedom of religion or belief.

(a) The Committee deplores the ban on worship imposed on the Baha'i community.

(b) The Committee is also concerned at the pressures applied to the judiciary by extremists claiming to represent Islam, who have even succeeded, in some cases, in imposing on courts their own interpretation of the religion (articles 14, 18 and 19 of the Covenant).

> **The State party must see to it that its legislation and practice are consistent with article 18 of the Covenant as regards the rights of the Baha'i community and reinforce its legislation, in particular Act No. 3 of 1996, to make it consistent with articles 14, 18 and 19 of the Covenant.**

(18) The Committee is deeply concerned at the State party's failure to take action following the publication of some very violent articles against the Jews in the Egyptian press, which in fact constitute advocacy of racial and religious hatred and incitement to discrimination, hostility and violence.

> **The State party must take whatever action is necessary to punish such acts by ensuring respect for article 20, paragraph 2, of the Covenant.**

(19) The Committee notes the criminalization of some behaviours such as those characterized as "debauchery" (articles 17 and 26 of the Covenant).

> **The State party should ensure that articles 17 and 26 of the Covenant are strictly upheld, and should refrain from penalizing private sexual relations between consenting adults.**

(20) While noting the efforts the State party has made to ensure that people are educated about human rights and tolerance, the Committee observes that results in this area are still inadequate.

> **The State party is invited to strengthen human rights education and use education to forestall all displays of intolerance and discrimination based on religion or belief.**

(21) The Committee is concerned at the restrictions placed by Egyptian legislation and practice on the foundation of non-governmental organizations and the activities of such organizations such as efforts to secure foreign funding, which require prior approval from the authorities on pain of criminal penalties (article 22 of the Covenant).

> **The State party should review its legislation and practice in order to enable non-governmental organizations to discharge their functions without impediments which are inconsistent with the provisions of article 22 of the Covenant, such as prior authorization, funding controls and administrative dissolution.**

(22) The Committee notes the de jure and de facto impediments to the establishment and functioning of political parties, primarily created by the committee set up under the Political Parties Act No. 40 of 1977, without full guarantees of independence (articles 22 and 25 of the Covenant).

> **The State party should permit the democratic expression of political pluralism and thus abide by its obligations under the Covenant, taking into account the Committee's general comment No. 25. It is also requested to provide in its next report a list of the offences for which a court may strip individuals of their civil and political rights.**

(23) **The State party should disseminate widely the text of its periodic reports and the present concluding observations.**

(24) **In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should within one year provide information on the implementation of the Committee's recommendations in paragraphs 6, 12, 13, 16 and 18 of the present text.**

The Committee requests the State party to provide in its next report, which it is scheduled to submit by 1 November 2004, information on the other recommendations made and on its implementation of the Covenant as a whole.

78. Togo

(1) The Human Rights Committee considered the third periodic report of Togo (CCPR/C/TGO/2001/3) at its 2052nd and 2053rd meetings, held on 21 and 22 October 2002 (CCPR/C/SR.2052 and 2053). It adopted the following concluding observations at its 2064th meeting (CCPR/C/SR.2064), held on 24 October 2002.

Introduction

(2) The Committee welcomes the submission of the third periodic report of Togo, containing detailed information on Togolese legislation relating to civil and political rights, and the opportunity thus afforded to it to resume its dialogue with the State party after eight years. Nevertheless, the Committee regrets the lack of information concerning the practical implementation of the Covenant, and on the factors and difficulties encountered by the State party in that regard. The Committee notes that the information supplied orally by the delegation replied only in part to the questions and concerns expressed in the list of written questions and during consideration of the report.

(3) The Committee wishes in particular to express its concern at the major contradictions between the many consistent allegations of serious violations of several provisions of the Covenant, notably articles 6, 7 and 19, and the sometimes categorical denials of the State party. In the view of the Committee, the State party has not demonstrated its resolve to get to the bottom of the allegations. Noting that the submission and consideration of reports are designed to institute a constructive and sincere dialogue the Committee encourages the State party to make every effort to that end.

Positive aspects

(4) The Committee is gratified at the importance attached in article 50 of the Constitution of Togo to international human rights instruments, and particularly the Covenant, the provisions of which form an integral part of the Constitution.

(5) The Committee welcomes the adoption on 17 November 1998 of an Act prohibiting female genital mutilation. The Committee takes note of the State party's commitment to pursue its efforts in that regard.

Principal subjects of concern and recommendations

(6) The Committee notes with concern that the process of bringing domestic laws, many of which predate the 1992 Constitution, into line with the provisions of the Constitution and international human rights instruments is at a standstill. Proposals drawn up with the help of the Office of the High Commissioner for Human Rights during the 1990s have not been followed up. The Committee is also concerned at the fact that many proposed reforms dealing in particular with the rights of children and women, some of them announced several years ago, have still not been enacted.

The State party should revise its legislation so as to bring it into line with the provisions of the Covenant.

(7) The Committee notes that, notwithstanding the provisions of articles 50 and 140 of the Constitution, the provisions of the Covenant have not been directly invoked in any case before the Constitutional Court or ordinary courts.

The State party should provide training for judges, lawyers and court officers, including the persons already serving in those capacities, concerning the content of the Covenant and the other international human rights instruments that Togo has ratified.

(8) The Committee would like to receive additional information on the structure, functions and results of the National Human Rights Commission, and welcomes the delegation's promise to forward the Commission's annual reports to it speedily (article 2 of the Covenant).

(9) The Committee is concerned at:

(a) Information that many extrajudicial executions, arbitrary arrests, threats and intimidation perpetrated by the Togolese security forces against members of the civilian population, in particular members of the opposition, have not been investigated in a credible manner. The Committee notes that the adoption of laws such as the December 1994 Amnesty Act is likely to reinforce the culture of impunity in Togo;

(b) The fact that the Joint United Nations/Organization of African Unity International Commission of Inquiry concluded that "a situation involving systematic violations of human rights existed in Togo during 1998" (E/CN.4/2001/134, para. 68). Those violations relate, in particular, to article 6 of the Covenant, and also to articles 7 and 9. The categorical rejection of the Commission's report, which the State party has declared to be inadmissible, and the creation some weeks later of a national commission of inquiry, which has clearly not sought to identify precisely those responsible for the violations drawn to the Government's attention, also prompt the greatest concern on the part of the Committee.

The State party should adopt legislative or other measures to combat and prevent the perpetration of such violations, in keeping with articles 6 and 9 of the Covenant and the Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions. The State party should establish, through judicial proceedings, the individual responsibilities of the alleged perpetrators of these violations.

(10) The Committee notes with satisfaction that for several years no death sentence imposed by a court has been carried out in Togo, but it remains concerned about the vagueness of the crimes for which the death penalty may be imposed.

The State party should limit the cases in which the death penalty is imposed and ensure that it is applied only for the most serious crimes. The Committee requests that it be provided with precise information (procedure followed, copy of court

decisions, etc.) on the persons who have been sentenced to death under articles 229 to 232 of the Penal Code, which relate to attacks against the internal security of the State. The Committee encourages the State party to abolish the death penalty and to accede to the Second Optional Protocol to the Covenant.

(11) The Committee expresses its concern at the consistent information that law enforcement personnel make excessive use of force in student demonstrations and various gatherings organized by the opposition. The Committee is surprised at the State party's reply in this regard, to the effect that the security forces never resort to excessive use of force and that the demonstrators are principally the victims of movements within the crowd. The Committee regrets that the State party has made no mention of any inquiry having been opened following these allegations.

The State party should open impartial inquiries following any allegation relating to the excessive use of force by the security forces. In particular, such inquiries should be carried out into the December 1999 demonstrations by students and teachers, and the demonstrations organized by non-governmental human rights organizations and political parties which were reported to have been violently broken up during 2001 and 2002.

(12) The Committee notes with concern the many allegations that torture is common practice in Togo, particularly on arrest, during police custody and in places of detention, whereas the State party claims that only a few rare cases of torture have occurred and that they were punished (art. 7).

The State party should honour its promise to transmit to the Committee, as soon as possible, written information concerning the treatment of detainees in Landja and Temedja camps.

The State party should ensure that all acts of torture constitute offences under its criminal law and prohibit any statement obtained under torture being used as evidence. Impartial and independent inquiries should be carried out with a view to addressing all allegations of torture and inhuman and degrading treatment ascribed to public officials and bringing the presumed perpetrators of the violations to justice. The Committee requests the State party to provide it with statistics on complaints of torture, proceedings undertaken to address such complaints, and sentences imposed.

(13) The Committee, taking note of the State party's acknowledgement that arbitrary arrests sometimes take place, is concerned at the many reports of the arbitrary arrest of members of the opposition and of civil society, human rights defenders and journalists, in violation of article 9 of the Covenant.

The State party should identify the prisoners who have allegedly been detained for political reasons in Togo and review their situation. The State party should also ensure that persons who have been arbitrarily arrested are released as soon as possible, and that judicial proceedings are instituted against the perpetrators of such violations.

(14) The Committee notes with concern that, on the one hand, the provisions of the Code of Criminal Procedure relating to police custody contain no reference to notifying detainees of their rights, the presence of a lawyer or the right of the detainee to inform a member of his family of his arrest. On the other hand, a medical examination of the detainee is possible only at his request or at the request of a member of his family, and with the consent of the procurator's office. Moreover, the time limit of 48 hours for police custody is allegedly rarely observed in practice, and some persons have reportedly been detained for years without being charged.

> **The Committee welcomes the delegation's promise to reply to it in writing concerning the cases of the persons whose names have been transmitted to it. The State party should reform the provisions of its Code of Criminal Procedure that deal with police custody with a view to ensuring the effective prevention of violations of the physical and psychological integrity of persons held in police custody and protecting their right to a defence, pursuant to articles 7, 9 and 14 of the Covenant. It should also ensure that justice is administered in a timely fashion, in accordance with article 14.**

(15) The Committee notes with concern that detention conditions in Togo are appalling, particularly in the civil prisons in Lomé and Kara, which are very overcrowded and where the food supply is uncertain and inadequate. This situation has been acknowledged by the State party, which draws attention to its financial difficulties and to its officers' lack of training.

> **The State party should develop alternative sentences to imprisonment. In addition, the State party should establish an independent inspectorate to carry out regular visits to all detention centres. That inspectorate should include elements independent of the Government, to ensure transparency and observance of articles 7 and 10 of the Covenant, and should be charged with making all the necessary proposals concerning ways of improving detainees' rights and detention conditions, including access to health care.**

(16) The Committee is deeply concerned at the alleged harassment, continuous intimidation and arrest of journalists, including incidents that took place in 2001 and 2002, and at reports that several independent publications and radio stations have been banned since the beginning of the year. The Committee takes note of the delegation's assertions that such restrictions on freedom of expression are imposed in accordance with article 26 of the Constitution but finds that the Press and Broadcasting Code has been amended over the past two years in a particularly repressive spirit.

> **The State party should review the Press and Broadcasting Code and ensure that it is consistent with article 19 of the Covenant.**

(17) The Committee is concerned at reports that opposition political parties lack practical access to public audio-visual and sound media and that the members of such parties are the target of continuous public slander campaigns in the media (articles 19 and 26 of the Covenant).

> **The State party should guarantee the fair access of political parties to public and private media and ensure that their members are protected against slander. The Committee would like to receive additional information on the way in which the**

High Audio-visual and Communications Authority ensures, in practice, that parties have fair access to the media, as well as on the results obtained. The substance of the regulations in that area should also be transmitted to the Committee.

(18) The Committee is concerned at reports that peaceful demonstrations organized by civil society are regularly prohibited and forcibly dispersed by the authorities, while marches in support of the President of the Republic are regularly organized by the authorities.

The State party should ensure the practical enjoyment of the right of peaceful assembly and should restrict the exercise of that right only as a last resort, in accordance with article 21 of the Covenant.

(19) The Committee is disturbed by the distinction that the State party makes between associations and non-governmental organizations and by reports that non-governmental human rights organizations have been unable to obtain permission to register.

The State party should provide information on the consequences of the distinction made between associations and non-governmental organizations. The State party should ensure that this distinction does not violate, in law or in practice, the provisions of article 22 of the Covenant.

The Committee notes the assurance given by the delegation that human rights defenders who have submitted information to the Committee will not be harassed in Togo.

(20) The Committee takes note of the State party's decision to dissolve, in June 2002, on the basis of article 40 of the Electoral Code, the Independent National Electoral Commission (CENI) that was the outcome of the Lomé Framework Agreement and was composed of representatives of various political parties. The Committee also takes note of the delegation's explanations in that regard, as well as of other reports that the State party has not made all the necessary efforts to ensure the smooth operation of CENI. In such conditions, the legislative elections of 27 October 2002, in which part of the opposition again refused to participate, might not have been sufficiently in keeping with the requirements of transparency and honesty under article 25 of the Covenant.

The State party should do everything in its power to ensure that the spirit and letter of the Lomé Framework Agreement are respected. The Committee also requests the State party to ensure the safety of all members of civil society, particularly the members of the opposition, during the forthcoming elections.

(21) The Committee notes with great concern that the Individuals and Family Code, which has been under review since 1999, still contains provisions that discriminate against women, particularly with respect to the minimum age for marriage, the choice of the matrimonial home and freedom to work; that it authorizes polygamy and designates the husband as head of the family; and that it upholds the primacy of particularly discriminatory customary laws relating to marriage and succession.

The State party should bring the Individuals and Family Code into line with articles 3, 23 and 26 of the Covenant and bear in mind, in this regard, the concerns expressed by non-governmental organizations active in the field of women's rights.

(22) The Committee is worried about continuing discrimination against women and girls with respect to access to education, employment, inheritance and political representation in Togo. Moreover, as the State party itself has acknowledged, certain cultural practices, as well as women's unawareness of their rights, give rise to many violations of women's rights.

The State party should eliminate all forms of discrimination against women, increase its efforts to educate girls and make the population more aware of women's rights, and carry out new programmes with a view to giving women access to employment and political posts.

(23) **The Committee recommends the introduction of a far-reaching human rights education programme for law enforcement personnel, particularly policemen, gendarmes and members of the armed forces, as well as all prison staff. Regular and specific training should be conducted with a view to combating torture and inhuman and degrading treatment and prohibiting extrajudicial executions and arbitrary arrests; such training should also include the treatment and rights of detainees. In this regard, the Committee suggests that the State party request assistance from the Office of the United Nations High Commissioner for Human Rights and from non-governmental organizations.**

(24) **The State party should disseminate widely the text of its third periodic report and the present concluding observations.**

(25) **In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should within one year provide information on the measures that it has taken or plans to take with a view to implementing the recommendations contained in paragraphs (9), (10), (12)-(14) and (20) of these observations. The Committee requests the State party to provide in its next report, which it is scheduled to submit by 1 November 2004, information on the other recommendations made and on the implementation of the Covenant as a whole.**

79. Estonia

(1) The Committee considered the second periodic report of Estonia (CCPR/C/EST/2002/2) at its 2077th and 2078th meetings, held on 20 and 21 March 2003 (CCPR/C/SR.2077 and 2078), and adopted the following concluding observations at its 2091st meeting (CCPR/C/SR.2091), held on 31 March 2003.

Introduction

(2) The Committee welcomes the second periodic report of the State party and expresses its appreciation for the frank and constructive dialogue with the delegation. It welcomes the detailed answers that were provided to its written questions.

(3) While the report was submitted with some delay, the Committee notes that it provides important information on all aspects of the implementation of the Covenant in the State party, as well as on concerns specifically addressed by the Committee in its previous concluding observations.

Positive aspects

(4) The Committee expresses its satisfaction over several new legislative developments in areas related to the implementation of the provisions of the Covenant that have taken place in the State party since the submission of the initial report.

(5) The Committee welcomes the measures taken by the State party to create the Office of the Legal Chancellor and the addition of ombudsman functions to its responsibilities.

(6) The Committee welcomes the measures and legislation adopted by the State party to improve the status of women in Estonian society and to prevent gender discrimination. It particularly notes article 5 of the Wages Act, which now prohibits the establishment of different wage conditions on the basis of gender, and articles 120 to 122 and article 141 of the new Penal Code, which make domestic violence and marital rape specific criminal offences.

(7) The Committee welcomes the delegation's affirmation that the problem of prison overcrowding is being resolved, through the decreasing number of persons detained owing, inter alia, to increasing resort to alternative forms of punishment and the opening of a new spacious prison in Tartu.

Principal subjects of concern and recommendations

(8) The Committee is concerned that the relatively broad definition of the crime of terrorism and of membership of a terrorist group under the State party's Criminal Code may have adverse consequences for the protection of rights under article 15 of the Covenant, a provision which, significantly, is non-derogable under article 4, paragraph 2.

> **The State party is requested to ensure that counter-terrorism measures, whether taken in connection with Security Council resolution 1373 (2001) or otherwise, are in full conformity with the Covenant.**

(9) While welcoming the additional explanations of the delegation on a case of alleged ill-treatment committed by police officers, the Committee remains concerned that acts of ill-treatment or other forms of violence perpetrated or condoned by law enforcement officials are not prosecuted on the basis of the most appropriate criminal charges but only as minor offences.

> **The State party should ensure that law enforcement officials are effectively prosecuted for acts that are contrary to article 7 of the Covenant, and that the charges correspond to the seriousness of the acts committed. The Committee also recommends that the State party guarantee the independence from police authorities of the newly created "police control department", which is responsible for carrying out investigations of abuses committed by the police.**

(10) The Committee takes note of the delegation's acknowledgement that legislation on detention of mental health patients is outdated and that steps have been taken to revise it, including the adoption of a draft Patient Rights Act. In this regard, the Committee is concerned at some aspects of the administrative procedure related to the detention of a person for mental health reasons, in particular the patient's right to request termination of detention, and, in the light of the significant number of detention measures that had been terminated after 14 days, the legitimate character of some of these detentions. The Committee considers that a period of 14 days of detention for mental health reasons without any review by a court is incompatible with article 9 of the Covenant.

> **The State party should ensure that measures depriving an individual of his or her liberty, including for mental health reasons, comply with article 9 of the Covenant. The Committee recalls the obligation of the State party under article 9, paragraph 4, to enable a person detained for mental health reasons to initiate proceedings in order to review the lawfulness of his/her detention. The State party is invited to furnish additional information on this issue and on the steps taken to bring the relevant legislation into conformity with the Covenant.**

(11) The Committee is concerned at information that deserters from the armed forces may have been kept in solitary confinement for up to three months.

> **The State party is under an obligation to ensure that the detention of alleged deserters is in conformity with articles 9 and 10 of the Covenant.**

(12) In the light of the State party's legislation on the use of firearms, the Committee expresses concern at the possibility of the use of lethal force in circumstances not presenting a risk to the lives of others.

> **The State party is invited to revise its outdated legislation to ensure that the use of firearms is restricted by the principles of necessity and proportionality as reflected in paragraphs 9 and 16 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (articles 7 and 10 of the Covenant).**

(13) While welcoming the precise information provided by the delegation on the procedure related to the determination of refugee status, the Committee remains concerned that the application of the principle of "safe country of origin" may deny the individual assessment of a refugee claim when the applicant is considered to come from a "safe" country.

> **The State party is reminded that, in order to afford effective protection under articles 6 and 7 of the Covenant, applications for refugee status should always be assessed on an individual basis and that a decision declaring an application inadmissible should not have restrictive procedural effects such as the denial of suspensive effect of appeal (articles 6, 7 and 13 of the Covenant).**

(14) Regretting that the concerns of its previous concluding observations (CCPR/C/79/Add.59, para. 12) have not been met, the Committee remains deeply concerned at the high number of stateless persons in Estonia and the comparatively low number of naturalizations. While the State party has adopted a number of measures designed to facilitate naturalization, a large number of stateless persons do not even initiate this procedure. The

Committee takes note of the different reasons underlying this phenomenon, but considers that this situation has adverse consequences in terms of the enjoyment of the Covenant rights and that the State party has a positive duty to ensure and protect those rights.

> **The State party should seek to reduce the number of stateless persons, with priority for children, inter alia by encouraging their parents to apply for Estonian citizenship on their behalf and by promotion campaigns in schools. The State party is invited to reconsider its position as to the access to Estonian citizenship by persons who have taken the citizenship of another country during the period of transition and by stateless persons. The State party is also encouraged to conduct a study on the socio-economic consequences of statelessness in Estonia, including the issue of marginalization and exclusion (articles 24 and 26 of the Covenant).**

(15) The Committee is concerned that the duration of alternative service for conscientious objectors may be up to twice as long as the duration of regular military service.

> **The State party is under an obligation to ensure that conscientious objectors can opt for alternative service, the duration of which is without punitive effect (articles 18 and 26 of the Covenant).**

(16) While welcoming the abolition of the requirement of proficiency in the Estonian language for standing as a candidate in elections and the assertion by the delegation that the use or size of advertisements and signs in other languages is not restricted, the Committee is concerned at the practical implementation of Estonian language proficiency requirements, including in the private sector, and the effect this may have on the availability of employment to the Russian-speaking minority. It is also concerned that, in those areas where a substantial minority speaks primarily Russian, public signs are not posted also in Russian.

> **The State party is invited to ensure that, pursuant to article 27 of the Covenant, minorities are able in practice to enjoy their own culture and to use their own language. It is also invited to ensure that legislation related to the use of languages does not lead to discrimination contrary to article 26 of the Covenant.**

(17) Taking into account the considerable number of non-citizens residing in the State party, the Committee is concerned about legislation prohibiting non-citizens from being members of political parties.

> **The State party should give due consideration to the possibility for non-citizens to become members of political parties (article 22 of the Covenant).**

(18) The Committee regrets the lack of detailed information about the actual results of the activities of the Legal Chancellor and other bodies, like the Labour Inspectorate, in relation to their competence to receive and deal with individual complaints.

> **The State party is invited to furnish detailed information on the number, nature and outcome, as well as concrete examples, of individual cases submitted to the Office of the Legal Chancellor and other bodies empowered to deal with individual complaints.**

(19) **The State party should disseminate widely the text of its second periodic report, the replies provided to the Committee's list of issues and the present concluding observations.**

(20) **In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should provide within one year relevant information on the implementation of the Committee's recommendations in paragraphs (10), (14) and (16) above. The third periodic report should be submitted by 1 April 2007.**

80. Luxembourg

(1) The Committee considered the third periodic report of Luxembourg (CCPR/C/LUX/2002/3) at its 2080th and 2081st meetings (CCPR/C/SR.2080 and CCPR/C/SR.2081), held on 24 March 2003, and adopted the following concluding observations at its 2089th meeting (CCPR/C/SR.2089) on 28 March 2003.

Introduction

(2) The Committee welcomes with satisfaction the third periodic report of Luxembourg. It is pleased to be able to resume its dialogue with the State party over 10 years after the consideration of the preceding report. It regrets that the third report did not go into detail on the issues of national jurisprudence, the practical aspects of the implementation of the Covenant and the many questions raised by the Committee during the consideration of the second periodic report. However, it welcomes the high quality of the written and oral replies provided by the Luxembourg delegation.

Positive aspects

(3) The Committee has taken note of the Luxembourg delegation's position that the Covenant takes precedence over internal law, including the Constitution. The Committee welcomes the institutional changes the State party is making in prisons in order to prevent suicides. It has also taken note of the initiatives in the form of bills that the State party is taking in order to ensure better protection for the victims of trafficking in persons for the purposes of forced prostitution and for witnesses in judicial proceedings; to combat family violence; and to change the law relating to the press to embody in it the principle of proportionality. It has taken note of the State party's intention not only to implement the relevant legislative provisions, but also to make society, and victims in particular, aware of the use of existing protection mechanisms.

Principal subjects of concern and recommendations

(4) The Committee takes note of the Luxembourg delegation's comments on the limited, or even theoretical, scope of the reservations formulated by the State party to various provisions of the Covenant.

> **The State party should reconsider its reservations with a view to ensuring, insofar as possible, that they are withdrawn.**

(5) The Committee regrets the lack of detailed information on equality of men and women in the private and public sectors and, in particular, on obstacles in this regard (articles 3 and 26 of the Covenant).

The State party should provide the Committee with a detailed analysis of the question in its next report.

(6) The Committee continues to be concerned, on the one hand, about the maximum length of time detainees may be held in solitary confinement, i.e. six months, and the lack of information on the conditions in which such treatment is applied and, on the other hand, by the holding of detainees incommunicado, even though this has happened only once in 12 years.

The State party should ensure that practices with regard to the treatment of detainees are in keeping with articles 7, 9 and 10 of the Covenant. In this connection, the State party should adopt legislation regulating and limiting incommunicado detention with the long-term objective of eliminating it completely, particularly during pre-trial detention.

(7) The Committee notes, on the one hand, that the State party grants financial assistance to the Christian and Jewish communities only and, on the other hand, that the criteria applied (such as membership of a religion recognized worldwide and officially in at least one European Union country) may give rise to problems as far as their compatibility with the provisions of articles 18, 26 and 27 of the Covenant is concerned.

The State party should guarantee non-discriminatory treatment of communities of religion and belief in respect of financial assistance and, to this end, ensure that all criteria in this regard are revised to guarantee that they are in keeping with the Covenant.

(8) The Committee remains concerned that, for a large number of offences, the systematic deprivation of the right to vote is an additional penalty in criminal cases (article 25 of the Covenant).

The State party should take steps to bring its legislation into line with paragraph 14 of general comment No. 25.

(9) The Committee notes that the Civil Code still draws a distinction between "legitimate" children and children born out of wedlock, whereas by law, they are entitled to the same rights (article 26 of the Covenant).

The State party should remove this obsolete distinction from the Civil Code.

(10) While taking note of the awareness-raising efforts being made by the State party, the Committee regrets that the Covenant and the Optional Protocol are still not well known to the public.

The State party should disseminate the Covenant and the Optional Protocol more widely.

(11) **The State party should disseminate widely the text of its third periodic report and the present concluding observations.**

(12) **In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should within one year provide information on the implementation of the recommendations made by the Committee in paragraph (6) concerning the question of the holding of detainees in solitary confinement. The Committee requests the State party to provide information on the other recommendations made and on its implementation of the Covenant as a whole in its next report, which it is scheduled to submit by 1 April 2008.**

81. Mali

(1) The Human Rights Committee considered the second periodic report of Mali (CCPR/C/MLI/2003/2) at its 2083rd and 2084th meetings, held on 24 and 25 March 2003 (CCPR/C/SR.2083 and 2084). It adopted the following concluding observations at its 2095th and 2096th meetings (CCPR/C/SR.2095 and 2096), held on 2 and 3 April 2003.

Introduction

(2) The Committee welcomes the submission of the second periodic report of Mali and the opportunity thus afforded to resume its dialogue with the State party after an interval of more than 20 years. In the view of the Committee, non-submission of a report over such a lengthy period reflects a failure on the part of Mali to discharge its obligations under article 40 of the Covenant and an obstacle to in-depth consideration of the measures to be taken to ensure satisfactory implementation of the Covenant. The Committee invites the State party to submit its reports henceforth in accordance with the reporting interval established by the Committee.

(3) The Committee welcomes the information provided on political and constitutional developments in the State party as well as on the constitutional and legal framework created by the democratic renewal since 1990. Nevertheless, it regrets the formalistic nature of the second periodic report, which is not in accordance with the Committee's guidelines: the report contains very little information on the day-to-day implementation of the Covenant or on factors and difficulties encountered. The Committee notes with regret that the report does not address the issues transmitted to the State party in advance. It regrets that the delegation was unable to reply in depth to the questions and concerns raised in the list of issues as well as during consideration of the report.

Positive aspects

(4) The Committee welcomes Mali's transition to democracy in the early 1990s. It notes the efforts made by the State party to ensure greater respect for human rights and establish a State governed by the rule of law through the initiation of wide-ranging programmes of legislative reform, settlement of the conflict in the north and establishment of the position of ombudsman. The Committee notes that these efforts have been made despite the meagre resources available to the State party and the difficulties facing it.

(5) The Committee welcomes the moratorium on the application of the death penalty in force in Mali since 1979, and the current trend towards the abolition of capital punishment.

(6) The Committee commends the State party on the measures it has taken to combat the trafficking of Malian children to other countries.

Principal subjects of concern and recommendations

(7) The Committee notes that under the Constitution treaties take precedence over legislation and that, according to information supplied by the delegation, the Covenant can be invoked directly before national courts. It regrets, however, that specific instances in which the Covenant has been directly invoked, or in which the Constitutional Court has considered the compatibility of national legislation with the Covenant, have not been brought to its attention.

> **The State party must ensure that judges, lawyers and court officers, including those already in service, are trained in the content of the Covenant and the other international human rights instruments ratified by Mali. The Committee wishes to be provided with more comprehensive information on the effective remedies available to individuals in the event of violation of the rights set forth in the Covenant, as well as instances in which courts or tribunals have invoked the provisions of the Covenant.**

(8) The Committee notes with concern that the National Advisory Commission on Human Rights, established in 1996, has yet to meet.

> **The State party should take appropriate measures to allow the National Advisory Commission on Human Rights to function, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), as set forth in General Assembly resolution 48/134.**

(9) The Committee, while welcoming the conclusion in 1992 of the National Pact between the Government and the rebel movement in the north of the country, regrets that it has not been provided with adequate information on the status of implementation of the peace agreements.

> **The Committee wishes to receive more detailed information in this regard, in particular on the repatriation of Malian refugees, economic and social development in the north, and the effects of the policy of decentralization on pacification and the situation of human rights in that region.**

(10) While welcoming the establishment of a Ministry for the Advancement of Women, Children and the Family, the Committee expresses its grave concern at the continued existence in Mali of legislation which discriminates against women, in particular with regard to marriage, divorce, and inheritance and succession, and of discriminatory customary rules relating to property ownership. The Committee, while appreciating that adoption of a Family Code requires wide-ranging consultations, notes with concern that the proposed reform, ongoing since 1998, has not yet concluded. The Committee is also concerned about information that the practice of the levirate, a practice whereby a widow is inherited by the deceased husband's brother or cousin, is said to persist in Mali (articles 3, 16 and 23 of the Covenant).

(a) The State party should expedite the adoption of the Family Code; the Committee recommends that the Code comply with the provisions of articles 3, 23 and 26 of the Covenant, in particular with regard to the respective rights of spouses in the context of marriage and divorce. In this connection, the Committee draws the attention of Mali to its general comment No. 28 on equality of rights between men and women, in particular with regard to polygamy, a practice that violates the dignity of women and constitutes unacceptable discrimination against women. The State party should abolish polygamy once and for all.

(b) Particular attention should be paid to the question of early marriage by girls, a widespread phenomenon. The State party should raise the minimum legal age for marriage by girls to the same age as for boys.

(c) The State party should establish a succession regime that does not discriminate against women: equality of heirs without discrimination on the basis of sex should be guaranteed, and the State should ensure better guarantees of the rights of widows and that upon succession there is a fair distribution of assets.

(d) The State party should abolish the levirate once and for all and apply appropriate penalties against those engaging in the practice, and take appropriate measures to protect and support women, especially widows.

(11) The Committee notes with concern that a very high percentage of women in Mali have reportedly been subjected to genital mutilation. The Committee welcomes the programmes already implemented by the authorities and non-governmental organizations to combat the practice, but regrets that there is no specific legal prohibition. The State party, moreover, has not been able to provide precise information on the specific results produced by the actions already taken (articles 3 and 7 of the Covenant).

The State party should prohibit and criminalize the practice of female genital mutilation so as to send a clear and strong signal to those concerned. The State party should strengthen its awareness-raising and education programmes in that regard and inform the Committee, in its next periodic report, of efforts made, results obtained and difficulties encountered.

(12) The Committee is concerned about reports of domestic violence in Mali and the failure by the authorities to prosecute the perpetrators of these acts and to take care of the victims. Bearing in mind the delegation's reply, to the effect that domestic violence is punishable under the current provisions of the Penal Code, the Committee stresses the need for special legislation to deal with such violence, given its specific nature (articles 3 and 7 of the Covenant).

The State party should adopt specific legislation expressly prohibiting and punishing domestic violence. Victims should be properly protected. The State party should adopt a policy of prosecuting and punishing such violence, including by issuing clear directives to that effect to its police and through appropriate awareness-raising and training measures for its officials.

(13) The Committee states its concern about reports that women do not enjoy rights on an equal basis with men as regards political participation and access to education and employment.

> **The State party should strengthen its efforts to promote the situation of women in the areas of political participation, access to education and access to employment. The State party is invited to give information, in its next report, on the action it has taken and the results obtained.**

(14) While noting the considerable efforts made by the State party, the Committee remains concerned at the high maternal and infant mortality rate in Mali, due in particular to the relative inaccessibility of health and family planning services, the poor quality of health care provided, the low educational level and the practice of clandestine abortions (article 6 of the Covenant).

> **So as to guarantee the right to life, the State party should strengthen its efforts in that regard, in particular in ensuring the accessibility of health services, including emergency obstetric care. The State party should ensure that its health workers receive adequate training. It should help women avoid unwanted pregnancies, including by strengthening its family planning and sex education programmes, and ensure that they are not forced to undergo clandestine abortions, which endanger their lives. In particular, attention should be given to the effect on women's health of the restrictive abortion law.**

(15) The Committee is concerned by reports of cases of torture and extrajudicial executions, allegedly committed by soldiers in 2000 following the murder of three tourists in Kidal. The Committee finds it difficult to accept the view of the delegation that there were no extrajudicial executions, even though no inquiry has been conducted by the State party. The Committee is also seriously concerned about the delegation's statement that no inquiries have been conducted into the complaints of torture and inhuman or degrading treatment made by members of opposition parties arrested in 1997, because of the national reconciliation process and the need to protect public order (articles 6 and 7).

> **The State party should avoid the growth of a culture of impunity for the perpetrators of human rights violations and should ensure that systematic inquiries are conducted into allegations of violence against life and limb by its officials.**

(16) The Committee regrets that the State party has not given a clear response to the reports of slavery-like practices and hereditary servitude in the north of the country. While domestic law does not authorize such practices, the Committee is seriously concerned about their possible survival among the descendants of slaves and the descendants of slave-owners. The Committee stresses that the lack of complaints about such practices cannot be adduced as proof that the practices themselves do not exist (article 8).

> **The State party should conduct a careful study of the relations between the descendants of slaves and the descendants of slave-owners in the north of the country, with a view to determining whether slavery-like practices and hereditary servitude still continue and, if so, to inform the Committee of measures taken in response.**

(17) Recalling the efforts undertaken by the State party in this regard, the Committee remains concerned about the trafficking of Malian children to other countries in the region, in particular Côte d'Ivoire, and their subjection to slavery and forced labour (article 8).

> **The State party should take action to eradicate this phenomenon. Information on measures taken by the authorities to prosecute the perpetrators of this traffic, as well as more precise details of the numbers of victims and of children benefiting from protection, repatriation and reintegration measures, should be provided in the next periodic report.**

(18) While welcoming the various programmes adopted by the State party, the Committee is very concerned about the situation of migrant girls leaving the countryside for the towns to work as domestic servants and who, according to some reports, work an average of 16 hours a day for very low or non-existent wages, are often the victims of rape and ill-treatment, and may be forced into prostitution (article 8).

> **The State party should intensify its efforts to punish those responsible for the exploitation of these migrant girls. The State party should adopt and develop appropriate complaint and protection mechanisms and is urged to provide information on the number of girls subjected to such exploitation, the number of those benefiting from protection and reintegration measures, and the content of its labour legislation and criminal law in this area.**

(19) The Committee notes that, under Malian law, police custody may be extended beyond 48 hours and that such extensions are authorized by the public prosecutor.

> **The State party should: (a) supplement its legislation to conform to the provisions of article 9, paragraph 4, of the Covenant, which requires that a court must decide without delay on the lawfulness of detention in custody; and (b) supervise the conditions of such custody, in accordance with article 9 of the Covenant. Precise information about the rights of persons in custody, measures to uphold these rights in practice and the methods of supervising conditions under which people are held in custody should be provided in the next periodic report.**

(20) The Committee is concerned about reports of the hardship suffered by some 6,000 Mauritanian refugees who, for the last 10 years, have been living in the west of the country (Kayes region), are not registered, possess no identity papers, have the de facto status of stateless persons and whose right to physical security is not sufficiently protected.

> **The State party should enter into discussions with the Office of the United Nations High Commissioner for Refugees (UNHCR), with a view to improving the status and conditions of these persons.**

(21) **The Committee sets 1 April 2005 as the date of submission of Mali's third periodic report. It requests that the text of the State party's second periodic report and its present concluding observations be published and widely disseminated throughout the country and that the third periodic report be brought to the attention of civil society and non-governmental organizations working in Mali.**

(22) In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should within one year provide information on its response to the Committee's recommendations contained in paragraphs (10) (a) and (d), (11) and (12). The Committee requests the State party to provide in its next report information on the other recommendations made and on the implementation of the Covenant as a whole.

82. Slovakia

(1) The Committee examined the second periodic report submitted by Slovakia (CCPR/C/SVK/2003/2) at its 2107th and 2108th meetings, held on 17 and 18 July 2003 (CCPR/C/SR.2107 and 2108), and adopted the following concluding observations at its 2121st meeting, held on 28 July 2003 (CCPR/C/SR.2121).

Introduction

(2) The Committee has examined the detailed and comprehensive report of Slovakia. The Committee is grateful to the delegation of Slovakia for supplying it with a great deal of information about the implementation of the Covenant in Slovakia.

Positive aspects

(3) The Committee commends the State party for its commitment to following up on the concluding observations of the Committee, in particular through the adoption by the Government of resolution No. 519/1998 tasking individual ministries with following up on recommendations of the Committee and consistent references to the previous concluding observations, both in the second periodic report as well as in the replies to the list of issues.

(4) The Committee welcomes progress made in various areas since the review of the initial report in 1997, and in particular the continuing process of bringing the State party's legislation into harmony with its international obligations. This includes Constitutional Statute No. 90/2001 amending and supplementing the Constitution of the Slovak Republic; amendment of the Criminal Code eliminating the crime of defamation of the Republic and its representatives; amendment of the Labour Code to include non-discrimination principles, including in the area of sexual orientation; and the amendments to the Criminal Code to improve protection of the victim in domestic violence cases.

(5) The Committee welcomes the fact that Slovakia has ratified the Second Optional Protocol to the Covenant.

(6) The Committee welcomes the explanation provided in the report and confirmed by the delegation that the State party interprets succession to mean the continuity of its obligations under the Covenant, including in relation to any cases submitted under the Optional Protocol, irrespective of the date of deposition of the instrument of succession by the State party following the dissolution of Czechoslovakia and the creation of the Slovak Republic.

Principal subjects of concern and recommendations

(7) While welcoming the creation of the institution of Ombudsman and the election of an Ombudsman, the Committee regrets that it has received insufficient information on the nature of the complaints submitted to and processed by the Ombudsman to enable it to assess the scope and effectiveness of the activities of this new institution.

The State party should ensure the effectiveness of the Ombudsman as an independent monitoring mechanism for the implementation of Covenant rights, particularly in the area of discrimination. It requests the State party to provide the Committee with the annual reports of the Ombudsman when submitting the third periodic report.

(8) The Committee observes that the proposed draft equal treatment law has not been adopted. While noting the information provided by the delegation that existing anti-discrimination laws enable possible instances of discrimination to be addressed, the Committee regrets that the delegation did not provide any statistics on the number of complaints submitted, the grounds for the complaints, as well as the outcomes.

The State party should continue with further measures to ensure the effectiveness of legislation against discrimination. It should also adopt further legislation in fields not covered by the current legislation in order to ensure full compliance with articles 2, 3 and 26 of the Covenant. The Committee urges the State party to establish adequate monitoring and redress mechanisms which provide ready access to individuals, in particular from vulnerable groups.

(9) The Committee is concerned at reports of high rates of domestic violence and regrets that the statistics provided by the State party were inconclusive. While noting some positive steps taken by the State party in the area of legislation, the Committee regrets that the adoption of the National Strategy for the Prevention and Elimination of Violence Committed against Women and in Families has been delayed (arts. 3, 9, 26).

The State party should adopt the necessary policy and legal framework to combat domestic violence; specifically, it should provide a framework for the protection of a spouse who is subjected to violence or threats of violence. The Committee recommends that the Government of Slovakia establish crisis centre hotlines and victim support centres equipped with medical, psychological, legal and emotional support services; in order to raise public awareness, it should disseminate information on this issue through the media.

(10) The Committee notes the efforts made by the State party to address the situation regarding trafficking in women, in particular by adopting a preventive strategy by providing information to potential victims and through international cooperation. However, the Committee notes that it has received only limited statistical information from the State party. It notes that trafficking is an international crime and therefore not only concerns women trafficked out of Slovakia, but also those being trafficked into Slovakia from neighbouring countries (arts. 3, 8).

The State party should strengthen programmes aimed at providing assistance to women in difficult circumstances, particularly those coming from other countries who are brought into its territory for the purpose of prostitution. Measures should be taken to prevent this form of trafficking and to impose sanctions on those who exploit women in this way. Protection should be extended to women who are the victims of this kind of trafficking so that they may have a place of refuge and an

opportunity to give evidence against the persons responsible in criminal or civil proceedings. The Committee encourages Slovakia to continue its cooperative efforts with border States to eliminate trafficking across national borders.

(11) The Committee is concerned about the persistent allegations of police harassment and ill-treatment during police investigations, particularly of the Roma minority, which the delegation described as resulting from psychological failure to handle the situation rather than to problems with legislation or police incompetence (arts. 2, 7, 9, 26).

The State party should take measures to eradicate all forms of police harassment and ill-treatment during police investigations of the Roma, including prompt investigations, prosecution of perpetrators and the provision of effective remedies to the victims.

(12) Despite the oral and written answers provided by the delegation, the Committee remains concerned at reports of forced or coerced sterilization of Roma women. In particular, the Committee regrets that in its written answers submitted after the oral consideration of the report, the State party did not clearly deny or admit breaches of the principle of full and informed consent but asserted that an investigation of maternity wards and gynaecology departments of 12 hospitals did not reveal infringements of "medical indication" of sterilization. The reference made, in the same submission, to "the fact that not all administrative acts were fulfilled in every case" appears to amount to an implicit admission of breaches of the requirement of informed consent (arts. 7, 26).

The State party should adopt all necessary measures to investigate all alleged cases of coerced or forced sterilization, publicize the findings, provide effective remedies to victims and prevent any future instances of sterilization without full and informed consent.

(13) The Committee is concerned at the continuing use of cage-beds as a measure of restraint in social care homes or psychiatric institutions (art. 10).

The use of cage-beds should cease.

(14) The Committee reiterates its concern, expressed in its previous concluding observations, at the fact that civilians may be tried by military courts, albeit in fewer situations than earlier (art. 14).

The State party should continue to revise its laws to the effect of excluding civilians from the jurisdiction of military courts.

(15) The Committee is concerned about the threat by governmental authorities of criminal prosecution of the authors of the publication "Body and Soul", under article 199 of the Criminal Code, for "spreading false rumours". While having been assured by the delegation that the Office of the Prosecutor General has dismissed the charges against the authors, the Committee is nevertheless concerned at the impact of the case on the exercise of the right to freedom of opinion and expression, particularly by human rights defenders (art. 19).

The State party should ensure that provisions of the Criminal Code are not used in such a way as to deter individuals from exercising their right to freedom of expression, in particular human rights defenders from carrying out independent research and publishing the results.

(16) The Committee is concerned about discrimination against the Roma. The Committee notes that the delegation has acknowledged the problem and stated that the situation of the Roma is both a short-term and a long-term priority of the Government. The Committee takes note of the measures aimed at improving the situation of Roma in various areas such as employment, health care, housing and education. The Committee also welcomes educational campaigns amongst the general public to attack stereotypes. However, the steps taken by the State party to improve the socio-economic condition of the Roma and to change the attitudes of society vis-à-vis the Roma do not appear to be sufficient, and de facto discrimination persists (arts. 2, 26).

The State party should take all necessary measures to eliminate discrimination against the Roma and to enhance the effective enjoyment of their rights under the Covenant. The State party should also make greater efforts to provide opportunities for Roma to use their language in official communications, to provide readily accessible social services, to provide training to Roma in order to equip them for employment and to create job opportunities for them. The Committee would like to receive full details on policies adopted in this regard and their results in practice.

(17) The Committee reiterates the concern expressed in its previous concluding observations about reports that Roma are often victims of racist attacks, without receiving adequate protection from law enforcement officers. It further notes continued reports of statements by prominent politicians reflecting discriminatory attitudes vis-à-vis the Roma (arts. 2, 20, 26).

The State party should take all necessary measures to combat racial violence and incitement, provide proper protection to Roma and establish adequate mechanisms to receive complaints from victims and ensure adequate investigation and prosecution of cases of racial violence and incitement to racial hatred.

(18) The Committee notes the introduction of programmes such as pre-school grades at elementary schools, the inclusion of Romani language education and the inclusion of teacher's assistant positions for Roma pupils. However, the Committee is concerned about the grossly disproportionate number of Roma children assigned to special schools designed for mentally disabled children, which causes a discriminatory effect in contravention of article 26 of the Covenant.

The State party should take immediate and decisive steps to eradicate the segregation of Roma children in its educational system by ensuring that any differentiation within education is aimed at securing attendance in non-segregated schools and classes. Where needed, the State party should also provide special training to Roma children to secure, through positive measures, their access to education without segregation.

(19) The Committee has taken note of the position of the delegation as to the reasons for the lack of statistical data with regard to the situation of Roma as well as of women. However, the Committee emphasizes the importance of data in assessing the situation in the State party and in addressing possible inequalities and patterns of discrimination. Furthermore, the Committee is concerned at the large discrepancy between official census figures and data provided by non-governmental organizations as to the size of the Roma population in the State party. Such under-reporting may have a significant impact on the position of Roma in public life, including the exercise of certain rights, for instance under the Minority Language Law (arts. 2, 3 and 26).

> **While appreciating the complex nature of gathering such data, the Committee urges the State party to take steps to collect, through methods compatible with the principles of data protection, statistical data reflecting the current size of the Roma population, as well as the position of minorities and women in society, including in the workplace, both in the public and the private sectors.**

(20) **The State party should disseminate widely the text of its second periodic report, the replies provided to the Committee's list of issues and the present concluding observations.**

(21) **In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should provide within one year relevant information on the implementation of the Committee's recommendations regarding police harassment and ill-treatment during police investigations, forced or coerced sterilization and the results of policies adopted to eradicate discrimination and combat racial violence and incitement. The Committee requests the State party to provide information on the other recommendations made and on the implementation of the Covenant as a whole in its final periodic report, to be submitted by 1 August 2007.**

83. Portugal

(1) The Human Rights Committee considered the third periodic report of Portugal (CCPR/C/PRT/2002/3) at its 2110th and 2111th meetings, held on 21 July 2003 (CCPR/C/SR.2110 and 2111). It adopted the following concluding observations at its 2126th meeting (CCPR/C/SR.2126), held on 31 July 2003.

Introduction

(2) The Committee welcomes the submission of the third periodic report of Portugal and the opportunity to resume the dialogue with the State party after an interval of more than 10 years. In the view of the Committee, the failure to submit a report over such a long period constitutes an obstacle to in-depth consideration of the measures that require to be taken to ensure satisfactory implementation of the Covenant. The Committee invites the State party to submit its reports henceforth in accordance with the reporting intervals established by the Committee.

(3) The Committee welcomes the information provided in the report, as well as the oral and written information provided by the delegation. It regrets, however, the insufficient information on the practical implementation of the Covenant and on factors and difficulties preventing or impeding such implementation.

Positive aspects

(4) The Committee appreciates the creation, in 1995, of the General Inspectorate of Internal Administration within the Ministry of the Interior, with a mandate to open inquiries into reports of police abuse. It also welcomes the creation of the General Inspectorate of Justice Services in 2000, as well as of the Office of Ombudsman.

(5) The Committee welcomes the decrease in prison overpopulation achieved in recent years, as well as the measures adopted to improve the situation of prisoners.

(6) The Committee welcomes the granting to foreigners of the rights to vote and to be elected in local elections, as well as the recognition of broader political rights for citizens of Portuguese-speaking countries, under condition of reciprocity.

(7) The Committee notes with satisfaction that the State party has translated into Portuguese and disseminated numerous United Nations documents relating to human rights.

Principal subjects of concern and recommendations

(8) The Committee is concerned about reported cases of disproportionate use of force and ill-treatment by the police, occurring particularly at the time of arrest and during police custody, and resulting, in some instances, in the death of the victims. Police violence against persons belonging to ethnic minorities appears to be recurrent. The Committee is equally concerned about the reported failure of the judicial and administrative systems to deal promptly and effectively with such cases, particularly those relating to the deaths of several persons in 2000 and 2001, allegedly caused by police officers (arts. 2, 6, 7 and 26).

> **(a) The State party should end police violence without delay. It should increase its efforts to ensure that education on the prohibition of torture and ill-treatment, as well as sensitization on issues of racial discrimination, are included in the training of law enforcement personnel. Efforts should also be made to recruit members of minority groups into the police.**
>
> **(b) The State party should ensure that all alleged cases of torture, ill-treatment and disproportionate use of force by police officers are fully and promptly investigated, that those found guilty are punished, and that compensation is provided to the victims or their families. To this end, a police oversight service, independent from the Ministry of the Interior, should be created. The State party is requested to provide the Committee with detailed statistical data on complaints relating to cases of torture, ill-treatment and disproportionate use of force by the police and their outcome, disaggregated by national and ethnic origin of the complainant.**

(9) The Committee notes with concern that Portuguese regulations on police use of firearms, as described in the periodic report, are not compatible with the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials. It is concerned that several persons have been shot dead by the police in recent years and that training in the use of firearms is reported to be insufficient (arts. 6 and 7).

The State party should ensure that principles 9, 14 and 16 of the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials, relating to legitimate cases of use of firearms, are fully integrated into Portuguese law and implemented in practice and that adequate training is effectively conducted.

(10) The Committee is concerned about reported cases of ill-treatment and abuse of authority by prison staff and of violence among prisoners which, in some instances, have led to the death of the victims (arts. 6, 7 and 10).

(a) The State party should increase its efforts towards the elimination of violence among prisoners and ill-treatment by prison staff, in particular through adequate training of staff and timely prosecution of offences.

(b) The State party should keep the Committee informed about the outcome of the proceedings conducted as a result of the violent death of two prisoners in October 2001 in the prison in Vale de Judeus. Responses to allegations of ill-treatment by prison staff in the prisons of Custóias and of Linhó (Sintra) are also requested.

(c) More comprehensive information on the status, mandate and achievements of the various agencies supervising prisons and dealing with complaints from detainees should be provided to the Committee.

(11) The Committee is concerned that, despite considerable improvement, overpopulation in prisons still amounts to 22 per cent, that access to health care remains problematic and that pre-trial and convicted detainees are not always kept separately in practice (arts. 7 and 10).

The State party should ensure that all persons deprived of liberty are treated with humanity and with respect for their inherent dignity as human beings. It should intensify its efforts to reduce the overpopulation in prisons and ensure that pre-trial and convicted detainees are kept separately. Appropriate and timely medical care must be available to all detainees.

(12) The Committee takes note that asylum-seekers whose applications are deemed inadmissible (e.g. on the basis of the exclusion clauses of article 1 F of the 1951 Convention relating to the Status of Refugees or because they have missed the eight-day deadline for submitting their applications) are not deported to countries where there is armed conflict or systematic violations of human rights. However, it remains concerned that applicable domestic law does not provide effective remedies against forcible return in violation of the State party's obligation under article 7 of the Covenant.

The State party should ensure that persons whose applications for asylum are declared inadmissible are not forcibly returned to countries where there are substantial grounds for believing that they would be in danger of being subjected to arbitrary deprivation of life or torture or ill-treatment, and provide effective remedies in domestic law in this regard.

(13) The Committee expresses concern about reported cases of police failure to register arrests and detentions (art. 9).

The State party should ensure that all arrests and detentions are registered, in particular through the improvement of its supervision system and the training of police officers.

(14) The Committee is concerned that a person may be held in pre-trial detention for a period of 6 to 12 months before charges are brought and that such detention in exceptional cases can last for up to 4 years. It further notes with concern that, in spite of the exceptional character of pre-trial detention, as stated in the Code of Criminal Procedure, almost one third of the persons detained in Portugal are in pre-trial detention (arts. 9 and 14).

The State party should amend its legislation in order to ensure that charges are brought against persons in pre-trial detention and that all persons are tried within a reasonable time. It should ensure that in practice magistrates only order pre-trial detention as a last resort.

(15) The Committee notes with concern that many of the provisions relating to terrorism in the Penal Code and the Code of Penal Procedure relate to exceptional situations, which may result in violations of articles 9, 15 and 17 of the Covenant.

The State party should ensure that measures taken against terrorism do not infringe the provisions of the Covenant and that exceptional provisions are not abused by State officials.

(16) The Committee notes with concern that detainees subject to solitary confinement as a disciplinary measure may only lodge an appeal if the period of confinement exceeds eight days. The Committee is also concerned that during solitary confinement the daily monitoring of detainees by fully qualified medical staff is not guaranteed (art. 10).

The State party should ensure the right of detainees to an effective remedy, with suspensive effect, against all disciplinary measures of solitary confinement and should guarantee that detainees are monitored daily by fully qualified medical staff during solitary confinement.

(17) The Committee notes that an accessory penalty of expulsion may not be imposed on a resident alien when the person concerned was born and lives in Portugal, or exercises parental authority over under-age children residing in Portugal, or has been in Portugal since he/she was less than 10 years old. The Committee is concerned, however, that those limitations may not protect the family life in all cases and that non-resident aliens do not benefit from such guarantees (arts. 17 and 26).

The State party should amend its legislation in order to ensure that the family life of resident and non-resident aliens sentenced to an accessory penalty of expulsion is fully protected.

(18) The Committee is concerned that lawyers and medical doctors may be required to give evidence, despite their duty of confidentiality, in cases which are described in very broad terms by the Code of Criminal Procedure (art. 17).

The State party should amend its legislation so that it specifies the precise circumstances in which limitations on the professional privilege of lawyers and medical doctors are imposed.

(19) The Committee notes with concern that, despite numerous protective legislative measures, the proportion of juvenile workers has increased in Portugal since 1998 and that no statistics have been gathered regarding the worst forms of child labour (art. 24).

The State party should intensify its efforts to eliminate child labour, conduct studies on the existence of the worst forms of child labour and strengthen the effectiveness of its supervisory system in this area. In its next periodic report, the State party should provide the Committee with detailed information regarding the practical application of article 24 of the Covenant, including on criminal and administrative sanctions which have been ordered.

(20) The Committee is concerned that, despite extensive positive measures adopted by the State party, the Roma continue to suffer from prejudice and discrimination, particularly with regard to access to housing, employment and social services, and that the State party was unable to submit detailed information, including statistical information, on the situation of these communities as well as on the results achieved by the institutions responsible for the advancement and welfare of the Roma (arts. 26 and 27).

(a) **The State party should intensify its efforts to integrate Roma communities in Portugal in a manner that is respectful of their cultural identity, in particular through the adoption of positive action with regard to housing, employment, education and social services.**

(b) **The State party should submit detailed information to the Committee about the situation and difficulties encountered by the Roma people, as well as on the results achieved by the High Commissioner for Immigration and Ethnic Minorities, the Commission for Equality and against Racial Discrimination and the Working Group for the Equality and Integration of Roma. Information relating to complaints filed with those institutions by members of ethnic minorities in Portugal and their outcome should also be provided.**

(21) The Committee regrets that insufficient information was provided about the activities and the achievements of the Ombudsman (art. 2).

The State party should submit more comprehensive information about the Ombudsman and provide the Committee with copies of the Ombudsman's annual report.

(22) **The Committee sets 1 August 2008 as the date of submission of Portugal's fourth periodic report. It requests that the text of the State party's third periodic report and the present concluding observations be published and widely disseminated throughout the country and that the fourth periodic report be brought to the attention of non-governmental organizations working in Portugal.**

(23) **In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide information within one year on its response to the Committee's recommendations contained in paragraphs (8) to (10). The Committee requests the State party to provide information in its next report on the other recommendations made and on the implementation of the Covenant as a whole.**

84. El Salvador

(1) The Human Rights Committee considered the consolidated third, fourth and fifth periodic reports of El Salvador (CCPR/C/SLV/2002/3) at its 2113th to 2115th meetings, on 22 and 23 July 2003 (CCPR/C/SR.2113 to 2115), and adopted the following concluding observations at its 2125th meeting, held on 30 July 2003 (CCPR/C/SR.2125).

Introduction

(2) The Committee welcomes the consolidated third, fourth and fifth periodic reports of El Salvador, while regretting the delay in their submission. It notes that the consolidated reports contain valuable information on the changes that have taken place in a variety of legal and institutional domains, and on the difficulties and obstacles that the State party is encountering in giving effect to the Covenant.

Positive aspects

(3) The Committee applauds the efforts made by the State party to consolidate and strengthen the rule of law and democracy, and notes with satisfaction the legal and institutional changes in human rights that it has made in recent years as a result of the 1992 Peace Accords.

(4) The Committee notes with satisfaction the State party's accession to the Optional Protocol to the Covenant in June 1995.

(5) The Committee applauds the establishment of a Human Rights Division in the National Civil Police (PNC) in June 2000 to provide support for the protection and promotion of human rights during the exercise of police duties. It also welcomes the delegation's statements about the approval in 2001, by Organization Act, of the Police Ethics Board, a watchdog body independent of the National Civil Police, although it regrets that the Board is still being set up.

Principal subjects of concern and recommendations

(6) The Committee reiterates its concern at the General Amnesty (Consolidation of the Peace) Act of 1993 and the application of that Act to serious human rights violations, including those considered and established by the Truth Commission. While it notes the position of the State party, which considers that the Act is compatible with the country's Constitution, the Committee considers that the Act infringes the right to an effective remedy set forth in article 2 of the Covenant, since it prevents the investigation and punishment of all those responsible for human rights violations and the granting of compensation to the victims.

The Committee reiterates the recommendation made in its concluding observations adopted on 8 April 1994, that the State party should review the effect of the General Amnesty Act and amend it to make it fully compatible with the Covenant. The State party should respect and guarantee the application of the rights enshrined in the Covenant.

(7) The Committee expresses concern at the fact that the investigations into the killing of Mgr. Oscar Romero, the Archbishop of San Salvador and similar cases have been under the statute of limitations, even though the supposed perpetrators have been identified, without checking whether the decision is compatible with the State party's obligations under international law.

The State party should review its rules on the statute of limitations and bring them fully into line with its obligations under the Covenant so that human rights violations can be investigated and punished.

(8) The Committee is sorry that the delegation did not give a proper answer to the question whether all military and court officials named in the report of the Truth Commission have been suspended from their duties as recommended by the Commission.

The State party is encouraged to follow the recommendations made by the Truth Commission in its report and provide the information requested.

(9) While it appreciates the steps that the State party has begun to take to reform the judicial system, such as setting up the National Council of the Judiciary, the Committee is concerned that those reforms may not be sufficient to ensure compliance with article 14 of the Covenant.

The State party is requested to provide more information on the new judicial system in its next report, emphasizing in particular the number of judges appointed following the reforms and their respective assignments.

(10) While it appreciates the investigations mounted into lawyers, judges and prosecutors with fictitious qualifications so as to ensure that, as required by article 2, paragraph 3, of the Covenant, those involved in the administration of justice are professionally competent, the Committee notes that, despite the large number of cases investigated, there have been only two dismissals.

The State party should pursue the investigations in order to ensure that the judicial system is staffed by people of the appropriate professional level.

(11) The Committee is concerned at the conditions under which certain members of the National Civil Police are recruited, since those conditions do not disbar persons who might have committed violations of human rights or humanitarian law from recruitment.

The State party should take action to ensure that there is no one in the National Civil Police who has committed any violations of human rights or humanitarian law.

(12) The Committee is concerned at reports of PNC involvement in violations of the right to life (art. 6) and in torture, cruel, inhuman or degrading treatment and abuse of authority (art. 7), and regrets that it was unable to obtain precise information on the number of sackings that have resulted from cases of torture or similar conduct.

> **The Committee requests the State party to supply precise information on this subject, and recommends compliance by PNC with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. It also requests the State party to consider establishing an external mechanism, independent of the National Civil Police, with the right to conduct inquiries and supervise the police.**

(13) The Committee is concerned about various reports of threats received by the Procurator in the performance of her duties.

> **In the light of article 2 of the Covenant, the Committee urges the State party to support the Office of the Procurator and provide it with full institutional backing so as to ensure its independence, and furnish the requisite physical and human resources for the Office to be fully operational. It also recommends the State party to take additional steps to guarantee the security of all Office officials in the performance of their functions.**

(14) The Committee expresses its concern at the severity of the current law against abortion in the State party, especially since illegal abortions have serious detrimental consequences for women's lives, health and well-being.

> **The State party should take steps to bring its legislation into line with the Covenant as regards the protection of life (art. 6), so that women can be helped to avoid unwanted pregnancies and need not to resort to clandestine abortions that may put their lives in danger, as mentioned in the Committee's general comment No. 28.**

(15) While noting the efforts made by the State party to combat domestic violence, the Committee notes with concern that violence against women persists: this raises questions under article 9 of the Covenant. The Committee is also concerned at the high proportion of women within the National Civil Police who have been subjected to violence.

> **The State party should take steps to ensure compliance with the Domestic Violence Act. The Committee also trusts that the institutional plan to incorporate the gender perspective within PNC will be put into effect.**

(16) The Committee expresses concern at the incidents of people being attacked, or even killed, on account of their sexual orientation (art. 9), at the small number of investigations mounted into such illegal acts, and at the current provisions (such as the local "contravention orders") used to discriminate against people on account of their sexual orientation (art. 26).

> **The State party should provide effective protection against violence and discrimination based on sexual orientation.**

(17) The Committee notes with concern that, despite the recent separation of prison facilities into pre-trial centres and sentence-enforcement prisons, prisons are still overcrowded and detainees awaiting or undergoing trial are still put together with convicted prisoners.

> **The State party should take appropriate steps to prevent prison overcrowding and ensure that accused persons are segregated from convicted persons in accordance with article 10 of the Covenant.**

(18) The Committee is concerned at the wording of article 297 of the Criminal Code, which does not offer a suitable description of the crime of torture.

> **The State party should offer stronger protection against torture and cruel, inhuman or degrading treatment or punishment (art. 7), in particular by clarifying the definition of the crime of torture given in article 297 of the Criminal Code and enforcing that article where necessary.**

(19) The Committee is sorry that the delegation was unable to explain the Legislative Assembly's reasons for not approving the establishment of a national commission of inquiry to track down children who disappeared in the conflict (arts. 6, 7 and 24).

> **The State party is urged to submit detailed information on the numbers of children found alive and the numbers that died in the fighting. It is also invited to reconsider the establishment of a national commission on disappeared children and a compensation fund for young people who are found.**

(20) The Committee notes with concern the statements by the delegation admitting restrictions on the right to form trade unions, while remarking that such restrictions are not applied systematically.

> **The State party should guarantee everyone the right to form and join trade unions for the protection of their interests, in conformity with article 22 of the Covenant.**

(21) **The Committee has scheduled the submission of the sixth periodic report of El Salvador for 1 August 2007. It urges the State party to circulate the consolidated third, fourth and fifth periodic reports and these concluding observations extensively within the country, and to bring the sixth periodic report to the attention of the non-governmental organizations and human rights groups operating in El Salvador.**

(22) **In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide information on the recommendations given in paragraphs (7), (8), (12), (13) and (18) within one year. The Committee requests the State party to provide in its next periodic report information on the other recommendations made in these concluding observations regarding the implementation of the Covenant.**

85. **Israel**

(1) The Committee considered the second periodic report of Israel (CCPR/C/ISR/2001/2) at its 2116th, 2117th and 2118th meetings (see CCPR/C/SR.2116-2118), held on 24 and 25 July 2003, and adopted the following concluding observations at its 2128th-2130th meetings (CCPR/C/SR.2128-2130), held on 4 and 5 August 2003.

Introduction

(2) The Committee welcomes the second periodic report submitted by Israel and expresses its appreciation for the frank and constructive dialogue with a competent delegation. It welcomes the detailed answers, both oral and written, that were provided to its written questions.

Factors and difficulties affecting the implementation of the Covenant

(3) The Committee has noted and recognizes the serious security concerns of Israel in the context of the present conflict, as well as the difficult human rights issues relating to the resurgence of suicide bombings which have targeted Israel's civilian population since the beginning of the second intifada in September 2000.

Positive factors

(4) The Committee welcomes the positive measures and legislation adopted by the State party to improve the status of women in Israeli society, with a view to promoting gender equality. In this context, it welcomes in particular the amendment to the Equal Rights for Women Law (2000), the Employment of Women Law (Amendment 19), the adoption of the Sexual Harassment Law (1998), the Prevention of Stalking Law (2001), the Rights of Victims of an Offence Law (2001), and other legislative measures designed to combat domestic violence. It also welcomes the establishment of the Authority for the Advancement of the Status of Women but would appreciate further, up-to-date information on its responsibilities and functioning in practice.

(5) The Committee welcomes the measures taken by the State party to combat trafficking in women for the purpose of prostitution, in particular the Prohibition on Trafficking Law enacted in July 2000 and the prosecution of traffickers since that date.

(6) The Committee notes the efforts to increase the level of education for the Arab, Druze and Bedouin communities in Israel. In particular, it notes the implementation of the Special Education Law and the Compulsory Education Law Amendment (2000).

(7) The Committee also notes the State party's information about the significant measures taken for the development of the Arab sector, in particular through the 2001-2004 Development Plan.

(8) The Committee welcomes legislation adopted by the State party in respect of persons with disabilities, in particular the enactment of the Equal Rights for People with Disabilities Law (1998). It expresses the hope that those areas where the rights of disabled people, acknowledged by the delegation as not being respected and requiring further improvements, will be addressed as soon as possible.

(9) The Committee notes the efforts by the State party to provide better conditions for migrant workers. It welcomes the amendment to the Foreign Workers Law and the increase in penalties imposed on employers for non-compliance with the law. It also welcomes free access to labour courts for migrant workers and the provision of information to them about their rights in several foreign languages.

(10) The Committee welcomes the Supreme Court's judgement of September 1999 which invalidated the former governmental guidelines governing the use of "moderate physical pressure" during interrogations and held that the Israeli Security Agency (ISA) has no authority under Israeli law to use physical force during interrogations.

Principal subjects of concern and recommendations

(11) The Committee has noted the State party's position that the Covenant does not apply beyond its own territory, notably in the West Bank and in Gaza, especially as long as there is a situation of armed conflict in these areas. The Committee reiterates the view, previously spelled out in paragraph 10 of its concluding observations on Israel's initial report (CCPR/C/79/Add.93 of 18 August 1998), that the applicability of the regime of international humanitarian law during an armed conflict does not preclude the application of the Covenant, including article 4 which covers situations of public emergency which threaten the life of the nation. Nor does the applicability of the regime of international humanitarian law preclude accountability of States parties under article 2, paragraph 1, of the Covenant for the actions of their authorities outside their own territories, including in occupied territories. The Committee therefore reiterates that, in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the Occupied Territories, for all conduct by the State party's authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law.

> **The State party should reconsider its position and include in its third periodic report all relevant information regarding the application of the Covenant in the Occupied Territories resulting from its activities therein.**

(12) While welcoming the State party's decision to review the need to maintain the declared state of emergency and to prolong it on a yearly rather than an indefinite basis, the Committee remains concerned about the sweeping nature of measures during the state of emergency that appear to derogate from Covenant provisions other than article 9, derogation from which was notified by the State party upon ratification. In the Committee's opinion, these derogations extend beyond what would be permissible under those provisions of the Covenant which allow for the limitation of rights (e.g. arts. 12, para. 3, 19, para. 3, and 21, para. 3). As to measures derogating from article 9 itself, the Committee is concerned about the frequent use of various forms of administrative detention, particularly for Palestinians from the Occupied Territories, entailing restrictions on access to counsel and on the disclosure of full reasons for the detention. These features limit the effectiveness of judicial review, thus endangering the protection against torture and other inhuman treatment prohibited under article 7 and derogating from article 9 more extensively than what in the Committee's view is permissible pursuant to article 4. In this regard, the Committee refers to its earlier concluding observations on Israel and to its general comment No. 29.

> **The State party should complete as soon as possible the review initiated by the Ministry of Justice of legislation governing states of emergency. In this regard, and pending the adoption of appropriate legislation, the State party should review the modalities governing the renewal of the state of emergency and specify the provisions of the Covenant from which it seeks to derogate, to the extent strictly required by the exigencies of the situation (art. 4).**

(13) The Committee is concerned that the use of prolonged detention without any access to a lawyer or other persons in the outside world violates the Covenant (arts. 7, 9, 10 and 14, para. 3 (b)).

The State party should ensure that no one is held for more than 48 hours without access to a lawyer.

(14) The Committee is concerned about the vagueness of definitions in Israeli counter-terrorism legislation and regulations which, although their application is subject to judicial review, appear to run counter to the principle of legality in several aspects owing to the ambiguous wording of the provisions and the use of several evidentiary presumptions to the detriment of the defendant. This has adverse consequences for the rights protected under article 15 of the Covenant, which is non-derogable under article 4, paragraph 2, of the Covenant.

The State party should ensure that measures designed to counter acts of terrorism, whether adopted in connection with Security Council resolution 1373 (2001) or in the context of the ongoing armed conflict, are in full conformity with the Covenant.

(15) The Committee is concerned by what the State party calls "targeted killings" of those identified by the State party as suspected terrorists in the Occupied Territories. This practice would appear to be used at least in part as a deterrent or punishment, thus raising issues under article 6. While noting the delegation's observations about respect for the principle of proportionality in any response to terrorist activities against civilians and its affirmation that only persons taking direct part in hostilities have been targeted, the Committee remains concerned about the nature and extent of the responses by the Israeli Defence Force (IDF) to Palestinian terrorist attacks.

The State party should not use "targeted killings" as a deterrent or punishment. The State party should ensure that the utmost consideration is given to the principle of proportionality in all its responses to terrorist threats and activities. State policy in this respect should be spelled out clearly in guidelines to regional military commanders, and complaints about disproportionate use of force should be investigated promptly by an independent body. Before resorting to the use of deadly force, all measures to arrest a person suspected of being in the process of committing acts of terror must be exhausted.

(16) While fully acknowledging the threat posed by terrorist activities in the Occupied Territories, the Committee deplores what it considers to be the partly punitive nature of the demolition of property and homes in the Occupied Territories. In the Committee's opinion the demolition of property and houses of families some of whose members were or are suspected of involvement in terrorist activities or suicide bombings contravenes the obligation of the State party to ensure without discrimination the right not to be subjected to arbitrary interference with one's home (art. 17), freedom to choose one's residence (art. 12), equality of all persons before the law and equal protection of the law (art. 26), and not to be subject to torture or cruel and inhuman treatment (art 7).

The State party should cease forthwith the above practice.

(17) The Committee is concerned about the IDF practice in the Occupied Territories of using local residents as "volunteers" or shields during military operations, especially in order to search houses and to help secure the surrender of those identified by the State party as terrorist suspects.

The State party should discontinue this practice, which often results in the arbitrary deprivation of life (art. 6).

(18) The Committee is concerned that interrogation techniques incompatible with article 7 of the Covenant are still reported frequently to be resorted to and the "necessity defence" argument, which is not recognized under the Covenant, is often invoked and retained as a justification for ISA actions in the course of investigations.

The State party should review its recourse to the "necessity defence" argument and provide detailed information to the Committee in its next periodic report, including detailed statistics covering the period since the examination of the initial report. It should ensure that alleged instances of ill-treatment and torture are vigorously investigated by genuinely independent mechanisms and that those responsible for such actions are prosecuted. The State party should provide statistics from 2000 to the present day on how many complaints have been made to the Attorney-General, how many have been turned down as unsubstantiated, how many have been turned down because the defence of necessity has been applied and how many have been upheld, and with what consequences for the perpetrators.

(19) While again acknowledging the seriousness of the State party's security concerns, which have prompted recent restrictions on the right to freedom of movement, for example through imposition of curfews or establishment of an inordinate number of roadblocks, the Committee is concerned that the construction of the "Seam Zone", by means of a fence and, in part, of a wall, beyond the Green Line imposes additional and unjustifiably severe restrictions on the right to freedom of movement of, in particular, Palestinians within the Occupied Territories. The "Seam Zone" has adverse repercussions on nearly all walks of Palestinian life; in particular, the wide-ranging restrictions on freedom of movement disrupt access to health care, including emergency medical services, and access to water. The Committee considers that these restrictions are incompatible with article 12 of the Covenant.

The State party should respect the right to freedom of movement guaranteed under article 12. The construction of a "Seam Zone" within the Occupied Territories should be stopped.

(20) The Committee is concerned by public pronouncements made by several prominent Israeli personalities in relation to Arabs that may constitute advocacy of racial and religious hatred constituting incitement to discrimination, hostility and violence.

The State party should take the necessary action to investigate, prosecute and punish such acts in order to ensure respect for article 20, paragraph 2, of the Covenant.

(21) The Committee is concerned about Israel's temporary suspension order of May 2002, enacted into law as the Nationality and Entry into Israel Law (Temporary Order) on 31 July 2003, which suspends, for a renewable one-year period, the possibility of family

reunification, subject to limited and subjective exceptions, especially in the cases of marriages between an Israeli citizen and a person residing in the West Bank or in Gaza. The Committee notes with concern that the suspension order of May 2002 has already adversely affected thousands of families and marriages.

The State party should revoke the Nationality and Entry into Israel Law (Temporary Order) of 31 July 2003, which raises serious issues under articles 17, 23 and 26 of the Covenant. The State party should reconsider its policy with a view to facilitating family reunification of all citizens and permanent residents. It should provide detailed statistics on this issue, covering the period since the examination of the initial report.

(22) The Committee is concerned about the criteria in the 1952 Law on Citizenship enabling the revocation of Israeli citizenship, especially its application to Arab Israelis. The Committee is concerned about the compatibility with the Covenant, in particular article 24 of the Covenant, of the revocation of the citizenship of Israeli citizens.

The State party should ensure that any changes to citizenship legislation are in conformity with article 24 of the Covenant.

(23) Notwithstanding the observations in paragraphs 4 and 7 above, the Committee notes with concern that the percentage of Arab Israelis in the civil service and public sector remains very low and that progress towards improving their participation, especially of Arab Israeli women, has been slow (arts. 3, 25 and 26).

The State party should adopt targeted measures with a view to improving the participation of Arab Israeli women in the public sector and accelerating progress towards equality.

(24) While noting the Supreme Court's judgement of 30 December 2002 in the case of eight IDF reservists (judgement HC 7622/02), the Committee remains concerned about the law and criteria applied and generally adverse determinations in practice by military judicial officers in individual cases of conscientious objection (art. 18).

The State party should review the law, criteria and practice governing the determination of conscientious objection, in order to ensure compliance with article 18 of the Covenant.

(25) **The State party is invited to disseminate widely the text of its second periodic report, the replies provided to the Committee's list of issues and the present concluding observations.**

(26) **In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party is invited to provide, within one year, relevant information on the implementation of the Committee's recommendations in paragraphs (13), (15), (16), (18) and (21) above. The State party's third periodic report should be submitted by 1 August 2007.**

CHAPTER V. CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL

86. Individuals who claim that any of their rights under the International Covenant on Civil and Political Rights have been violated by a State party, and who have exhausted all available domestic remedies, may submit written communications to the Human Rights Committee for consideration under the Optional Protocol. No communication can be considered unless it concerns a State party to the Covenant that has recognized the competence of the Committee by becoming a party to the Optional Protocol. Of the 149 States that have ratified, acceded or succeeded to the Covenant, 104 have accepted the Committee's competence to deal with individual complaints by becoming parties to the Optional Protocol (see annex I, section B). Since the last annual report, Djibouti has acceded to the International Covenant on Civil and Political Rights, while Djibouti and South Africa have become parties to the Optional Protocol. Moreover, under article 12, paragraph 2, of the Optional Protocol, the Committee is still considering communications from two States parties (Jamaica and Trinidad and Tobago) that denounced the Optional Protocol, in 1998 and 2000 respectively, such communications having been submitted before denunciation took effect.

87. Consideration of communications under the Optional Protocol is confidential and takes place in closed meetings (article 5, paragraph 3, of the Optional Protocol). Under rule 96 of the Committee's rules of procedure, all working documents issued for the Committee are confidential unless the Committee decides otherwise. However, the author of a communication and the State party concerned may make public any submissions or information bearing on the proceedings, unless the Committee has requested the parties to respect confidentiality. The Committee's final decisions (Views, decisions declaring a communication inadmissible, decisions to discontinue a communication) are made public; the names of the authors are disclosed unless the Committee decides otherwise.

88. Communications addressed to the Human Rights Committee are processed by the Petitions Team of the Office of the United Nations High Commissioner for Human Rights. This Team services the communications procedures under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

A. Progress of work

89. The Committee started its work under the Optional Protocol at its second session, in 1977. Since then, 1,197 communications concerning 74 States parties have been registered for consideration by the Committee, including 92 registered during the period covered by the present report.

90. The status of the 1,197 communications registered for consideration by the Human Rights Committee so far is as follows:

(a) Concluded by Views under article 5, paragraph 4, of the Optional Protocol: 436, including 341 in which violations of the Covenant were found;

(b) Declared inadmissible: 340;

(c) Discontinued or withdrawn: 165;

(d) Not yet concluded: 256.

91. In addition, the Petitions Team received several hundred communications in respect of which complainants were advised that further information would be needed before their communications could be registered for consideration by the Committee. The authors of more than 3,900 letters were informed that their cases will not be submitted to the Committee, for example, because they fall clearly outside the scope of application of the Covenant or of the Optional Protocol. A record of this correspondence is kept in the secretariat and reflected in the secretariat's database. The Special Rapporteur on new communications will register a number of these communications upon receipt of additional information and clarifications.

92. During the seventy-sixth to seventy-eighth sessions, the Committee concluded consideration of 32 cases by adopting Views thereon. These are cases Nos. 726/1996 (*Zheludkov v. Ukraine*), 757/1997 (*Pezoldova v. The Czech Republic*), 778/1997 (*Coronel et al. v. Colombia*), 781/1997 (*Aliev v. Ukraine*), 796/1998 (*Reece v. Jamaica*), 814/1998 (*Pastukhov v. Belarus*), 829/1998 (*Judge v. Canada*), 836/1998 (*Gelazauskas v. Lithuania*), 838/1998 (*Hendricks v. Guyana*), 852/1999 (*Borisenco v. Hungary*), 856/1999 (*Chambala v. Zambia*), 864/1999 (*Ruiz Agudo v. Spain*), 875/1999 (*Filipovich v. Lithuania*), 878/1999 (*Kang v. The Republic of Korea*), 886/1999 (*Bondarenko v. Belarus*), 887/1999 (*Lyashkevich v. Belarus*), 893/1999 (*Sahid v. New Zealand*), 900/1999 (*C. v. Australia*), 908/2000 (*Evans v. Trinidad and Tobago*), 933/2000 (*Adrien Mundyo Busyo, Thomas Osthudi Wongodi, René Sibu Matubuka et al. v. The Democratic Republic of the Congo*), 941/2000 (*Young v. Australia*), 950/2000 (*Sarma v. Sri Lanka*), 960/2000 (*Baumgarten v. Germany*), 981/2001 (*Gómez Casafranca v. Peru*), 983/2001 (*Love et al. v. Australia*), 986/2001 (*Semey v. Spain*), 998/2001 (*Althammer et al. v. Austria*), 1007/2001 (*Sineiro Fernandez v. Spain*), 1014/2001 (*Baban et al. v. Australia*), 1020/2001 (*Cabal and Pasini v. Australia*), 1077/2002 (*Carpo et al. v. The Philippines*) and 1086/2002 (*Weiss v. Austria*). The text of these Views is reproduced in volume II, annex VI.

93. The Committee also concluded consideration of 31 cases by declaring them inadmissible. These are cases Nos. 693/1996 (*Nam v. The Republic of Korea*), 743/1997 (*Truong v. Canada*), 771/1997 (*Baulin v. The Russian Federation*), 820/1998 (*Rajan v. New Zealand*), 837/1998 (*Kolanowski v. Poland*), 872/1999 (*Kurowski v. Poland*), 876/1999 (*Yama and Khalid v. Slovakia*), 881/1999 (*Collins v. Australia*), 890/1999 (*Krausser v. Austria*), 942/2000 (*Jonassen v. Norway*), 951/2000 (*Kristjánsson v. Iceland*), 953/2000 (*Zündel v. Canada*), 956/2000 (*Piscioneri v. Spain*), 972/2001 (*Kazantzis v. Cyprus*), 978/2001 (*Dixit v. Australia*), 980/2001 (*Hussain v. Mauritius*), 984/2001 (*Shukuru Juma v. Australia*), 987/2001 (*Gombert v. France*), 989/2001 (*Kollar v. Austria*), 1001/2001 (*Strik v. The Netherlands*), 1004/2001 (*Estevill v. Spain*), 1013/2001 (*Boboli v. Spain*), 1021/2002 (*Hiro Balani v. Spain*), 1038/2001 (*Ó Colchúin v. Ireland*), 1049/2002 (*Van Puyvelde v. France*), 1082/2002 (*De Clippele v. Belgium*), 1088/2002 (*Veriter v. France*), 1091/2002 (*Perera v. Sri Lanka*), 1114/2002 (*Kavanagh v. Ireland*), 1142/2002 (*Van Grinsven v. The Netherlands*) and 1169/2003 (*Hom v. The Philippines*). The text of these decisions is reproduced in volume II, annex VII.

94. Under the Committee's rules of procedure, the Committee will normally decide on the admissibility and merits of a communication together. Only in exceptional circumstances will the Committee request a State party to address admissibility only. A State party which has received a request for information on admissibility and merits may, within two months, object to

admissibility and apply for separate consideration of admissibility. Such a request, however, will not release the State party from the requirement to submit information on the merits within the fixed time limit, unless the Committee, its Working Group on Communications or its designated special rapporteur decides to extend the time for submission of information on the merits until after the Committee has ruled on admissibility. In the period under review, the Committee, acting through its Special Rapporteur on new communications, decided in seven cases to deal first with the admissibility of the communication.

95. During the period under review, four communications were declared admissible for examination on the merits. Decisions declaring communications admissible are not normally published by the Committee. Procedural decisions were adopted in a number of pending cases (under article 4 of the Optional Protocol or under rules 86 and 91 of the Committee's rules of procedure). The Committee requested the secretariat to take action in other pending cases.

96. The Committee decided to close the file of two cases following withdrawal by the authors (cases Nos. 1081/2002 (*Vélez Roman v. Colombia*) and 1129/2002 (*Mulumbi v. Zambia*)) and to discontinue the consideration of 19 communications, because, firstly, contact with the author was lost (cases Nos. 621/1995 (*Lam v. Canada*), 635/1995 (*Penny v. Trinidad and Tobago*), 685/1996 (*Jamieson v. Canada*), 729/1996 (*McKnight v. Jamaica*), 753/1997 (*Andade et al. v. Chile*), 766/1997 (*Barett v. Jamaica*), 769/1997 (*Chedumbrum v. Mauritius*), 776/1997 (*Firin v. Australia*), 801/1998 (*Kusnezova v. Ukraine*), 804/1998 (*Rochon v. Canada*), 805/1998 (*Zuev v. Ukraine*), 809/1998 (*Tschisekedi wa Mulumba v. The Democratic Republic of Congo*), 847/1999 (*Miguel Angel et al. v. Chile*), 853/1999 (*Kudinov v. Belarus*), 885/1999 (*Volgin v. The Russian Federation*), 924/2000 (*Singh v. New Zealand*), 929/2000 (*Lobatchev v. The Russian Federation*) and 1046/2002 (*Suresh v. Canada*)) and, secondly, the communication had become without object since a remedy had been granted for the alleged violation (1053/2002 (*Prasad v. Australia*)).

B. Growth of the Committee's caseload under the Optional Protocol

97. As the Committee has stated in previous reports, the increasing number of States parties to the Optional Protocol and better public awareness of the procedure have led to a growth in the number of communications submitted to the Committee. The table below sets out the pattern of the Committee's work on communications over the last six calendar years to 31 December 2002.

Communications dealt with, 1997-2002

Year	New cases registered	Cases concluded[a]	Pending cases at 31 December	Admissible cases at 31 December	Pre-admissible cases at 31 December
2002	107	51	278	19	259
2001	81	41	222	25	197
2000	58	43	182	27	155
1999	59	55	167	36	131
1998	53	51	163	42	121
1997	60	56	157	44	113

[a] Total number of all cases decided (by the adoption of Views, inadmissibility decisions and cases discontinued).

C. Approaches to considering communications under the Optional Protocol

1. Special Rapporteur on new communications

98. At its thirty-fifth session, in March 1989, the Committee decided to designate a Special Rapporteur authorized to process new communications as they were received, i.e. between sessions of the Committee. At the Committee's seventy-first session, in March 2001, Mr. Scheinin was designated as new Special Rapporteur. In the period covered by the present report, the Special Rapporteur transmitted 92 new communications to the States parties concerned under rule 91 of the Committee's rules of procedure, requesting information or observations relevant to the questions of admissibility and merits. In 28 cases, the Special Rapporteur issued requests for interim measures of protection pursuant to rule 86 of the Committee's rules of procedure. The competence of the Special Rapporteur to issue, and if necessary to withdraw, requests for interim measures under rule 86 of the rules of procedure is described in the annual report for 1997.[1]

2. Competence of the Working Group on Communications

99. At its thirty-sixth session in July 1989, the Committee decided to authorize the Working Group on Communications to adopt decisions declaring communications admissible when all five members so agreed. Failing such agreement, the Working Group refers the matter to the Committee. It also does so whenever it believes that the Committee itself should decide the question of admissibility. While the Working Group cannot adopt decisions declaring communications inadmissible, it makes recommendations in that respect to the Committee. It should be noted that during the period in question, four communications were declared admissible by the Working Group on Communications.

100. At its fifty-fifth session in October 1995, the Committee decided that each communication would be entrusted to a member of the Committee, who would act as rapporteur for it in the Working Group and in the plenary Committee. The role of the rapporteur is described in the report for 1997.[2]

D. Individual opinions

101. In its work under the Optional Protocol, the Committee seeks to adopt decisions by consensus. However, pursuant to rule 98 (formerly rule 94, paragraph 4) of the Committee's rules of procedure, members can add their individual (concurring or dissenting) opinions to the Committee's Views. Under this rule, members can also append their individual opinions to the Committee's decisions declaring communications admissible or inadmissible (formerly rule 92, paragraph 3).

102. During the period under review, individual opinions were appended to the Committee's Views in 13 cases, Nos. 726/1996 (*Zheludkov v. Ukraine*), 757/1997 (*Pezoldova v. The Czech Republic*), 814/1998 (*Pastukhov v. Belarus*), 829/1998 (*Judge v. Canada*), 838/1998 (*Hendricks v. Guyana*), 852/1999 (*Borisenco v. Hungary*), 900/1999 (*C. v. Australia*), 908/2000 (*Evans v. Trinidad and Tobago*), 941/2000 (*Young v. Australia*), 983/2001 (*Love et al. v. Australia*), 1014/2001 (*Baban et al. v. Australia*), 1020/2001 (*Cabal and Pasini v. Australia*)

and 1077/2002 (*Carpo et al. v. The Philippines*). Individual opinions were appended with respect to decisions to declare two communications - 693/1996 (*Nam v. The Republic of Korea*) and 942/2000 (*Jonassen v. Norway*) - inadmissible.

E. Issues considered by the Committee

103. A review of the Committee's work under the Optional Protocol from its second session in 1977 to its seventy-fifth session in July 2002 can be found in the Committee's annual reports for 1984 to 2002, which contain summaries of the procedural and substantive issues considered by the Committee and of the decisions taken. The full texts of the Views adopted by the Committee and of its decisions declaring communications inadmissible under the Optional Protocol are reproduced in annexes to the Committee's annual reports to the General Assembly.

104. Three volumes of "Selected Decisions of the Human Rights Committee under the Optional Protocol", from the second to the sixteenth sessions (1977-1982), from the seventeenth to the thirty-second sessions (1982-1988), and from the thirty-third to the thirty-ninth sessions (1980-1990) have been published (CCPR/C/OP/1, 2 and 3). Volume 4 of the Selected Decisions, covering the period from the fortieth to the forty-sixth sessions (1990-1992), is expected to be issued before the end of 2003. In addition, it has been decided that the series of Selected Decisions will be brought up to date until the beginning of 2005. As domestic courts increasingly apply the standards contained in the International Covenant on Civil and Political Rights, it is imperative that the Committee's decisions be available on a worldwide basis in a properly compiled and indexed volume.

105. The following summary reflects further developments concerning issues considered during the period covered by the present report.

1. Procedural issues

(a) Reservations and interpretative declarations

106. In case No. 1086/2002 (*Weiss v. Austria*), the Committee considered the reservation made by Austria to article 5 of the Optional Protocol and according to which "the Committee … shall not consider any communication from an individual unless it has been ascertained that the same matter has not been examined by the European Commission on Human Rights established by the European Convention for the Protection of Human Rights and Fundamental Freedoms". In response to the State party's contention that its reservation excluded the Committee's competence to consider the communication because, firstly, the author had submitted his case already for examination to the European Court of Human Rights and, secondly, the author's request for withdrawal of his case from the Court's list before presenting it to the Committee made clear that he raised essentially the same concerns before both organs, the Committee noted that:

> "… the Committee refers to its jurisprudence that where the European Court has gone beyond making a procedural or technical decision on admissibility, and has made an assessment of the merits of the case, then the complaint has been 'examined' within the terms of the Optional Protocol, or, in this case, the State party's reservation. In the present case, the Committee notes that the Court considered that respect for human rights did not require continued consideration of the case, and struck it out. The Committee

considers that a decision that a case is not of sufficient importance to continue its examination after an applicant's action to withdraw the complaint does not amount to a real assessment of its substance. Accordingly, the complaint cannot be said to have been 'examined' by the European Court and the Committee is not precluded by the State party's reservation from considering the claims that were presented under the European Convention but later withdrawn by the author" (annex VI, sect. FF, para. 8.3).

107. In case No. 989/2001 (*Kollar v. Austria*), the Committee decided:

"In the present case, the European Court went beyond an examination of purely procedural admissibility criteria, considering that the author's application was inadmissible, partly for incompatibility *ratione materiae*, partly because it disclosed no appearance of a violation of the provisions of the Convention. The Committee therefore concludes that the State party's reservation cannot be denied simply on the assumption that the European Court did not issue a judgement on the merit of the author's application ... The Committee further observes that, despite certain differences in the interpretation of article 6, paragraph 1, of the European Convention and article 14, paragraph 1, of the Covenant by the competent organs, both the content and scope of these provisions largely converge. In the light of the great similarities between the two provisions, and on the basis of the State party's reservation, the Committee considers itself precluded from reviewing a finding of the European Court on the applicability of article 6, paragraph 1, of the European Convention by substituting its jurisprudence under article 14, paragraph 1, of the Covenant. The Committee accordingly finds this part of the communication inadmissible under article 5, paragraph 2 (a), of the Optional Protocol, as the same matter has already been examined by the European Court of Human Rights. With regard to the author's claim under article 26 of the Covenant, the Committee recalls that the application of the principle of non-discrimination in that provision is not limited to the other rights guaranteed in the Covenant and notes that the European Convention contains no comparable discrimination clause. However, it equally notes that the author's complaint is not based on free-standing claims of discrimination, since his allegation of a violation of article 26 does not exceed the scope of the claim under article 14, paragraph 1, of the Covenant. The Committee therefore concludes that this part of the communication is also inadmissible under article 5, paragraph 2 (a), of the Optional Protocol" (annex VII, sect. 5, paras. 8.4, 8.6, 8.7).

108. In case No. 998/2001 (*Althammer et al. v. Austria*), the Committee found:

"Having concluded that the State party's reservation applies, the Committee needs to consider whether the subject matter of the present communication is the same matter as the one which was presented under the European system. In this connection, the Committee recalls that the same matter concerns the same authors, the same facts and the same substantive rights. The Committee on earlier occasions has already decided that the independent right to equality and non-discrimination embedded in article 26 of the Covenant provides a greater protection than the accessory right to non-discrimination contained in article 14 of the European Convention. The Committee has taken note of the decision taken by the European Court on 12 January 2001 rejecting the authors' application as inadmissible as well as of the letter from the Secretariat of the European Court explaining the possible grounds of inadmissibility. It notes that the authors' application was rejected because it did not disclose any appearance of a violation of the

> rights and freedoms set out in the Convention or its Protocols as it did not raise issues under the right to property protected by article 1 of Protocol No. 1. As a consequence, in the absence of an independent claim under the Convention or its Protocols, the Court could not have examined whether the authors' accessory rights under article 14 of the Convention had been breached. In the circumstances of the present case, therefore, the Committee concludes that the question whether or not the authors' rights to equality before the law and non-discrimination have been violated under article 26 of the Covenant is not the same matter that was before the European Court" (annex VI, sect. AA, para. 8.4).

109. In case No. 757/1997 (*Pezoldova v. The Czech Republic*), the Committee noted that a similar claim filed by the author had been declared inadmissible by the European Commission on Human Rights, but that article 5, paragraph 2 (a), of the Optional Protocol would not constitute an obstacle to the admissibility of the communication, since the matter was no longer pending before another procedure of international investigation or settlement and the Czech Republic had not made a reservation under article 5 (2)(a) of the Optional Protocol.

110. In case No. 950/2000 (*Sarma v. Sri Lanka*), the Committee "noted that, upon acceding to the Optional Protocol, Sri Lanka had entered a declaration restricting the Committee's competence to events following the entry into force of the Optional Protocol. However, the Committee considered that although the alleged removal and subsequent disappearance of the author's son had taken place before the entry into force of the Optional Protocol for the State party, the alleged violations of the Covenant, if confirmed on the merits, may have occurred or continued after the entry into force of the Optional Protocol" (annex VI, sect. V, para. 6.2).

111. In case No. 1004/2001 (*Estevill v. Spain*), the Committee decided that it did not need to examine the question related to the State party's reservation to article 5, paragraph 2, of the Optional Protocol, because it had already established that the author's claim was an abuse of the right of submission of communications.

112. In case No. 1020/2001 (*Cabal and Pasini v. Australia*), with regard to the State party's reservation to article 10, paragraph 2 (a), of the Covenant, which states that, "In relation to paragraph 2 (a) the principle of segregation is an objective to be achieved progressively", the Committee:

> "observe[d] that the State party's reservation in question is specific and transparent, and that its scope is clear. It refers to the *segregation* of convicted and unconvicted persons and does not extend, as argued by the authors and not contested by the State party, to cover the *separate treatment* element of article 10, paragraph 2 (a) as it refers to these two categories of persons. The Committee recognize[d] that while 20 years have passed since the State party entered the reservation and that it intended to achieve its objective 'progressively', and although it would be desirable for all States parties to withdraw reservations expeditiously, there [was] no rule under the Covenant on the time frame for the withdrawal of reservations.
>
> In addition, the Committee note[d] the State party's efforts to date to achieve this objective with the construction of the Melbourne Remand Centre in 1989, specifically for the purpose of housing remand prisoners, and its plan to construct two new prisons in Melbourne, including a remand prison, by end 2004. Consequently, although it may be

> considered unfortunate that the State party has not achieved its objective to segregate convicted and unconvicted persons in full compliance with article 10, paragraph 2 (a), the Committee [could not] find that the reservation [was] incompatible with the object and purpose of the Covenant" (annex VI, sect. DD, para. 7.4).

(b) Inadmissibility *ratione temporis* (Optional Protocol, art. 1)

113. Under article 1 of the Optional Protocol, the Committee may only receive communications concerning alleged violations of the Covenant which occurred after the entry into force of the Covenant and the Optional Protocol for the State party concerned, unless continuing effects exist which in themselves constitute a violation of a Covenant right.

114. In case No. 771/1997 (*Baulin v. The Russian Federation*), the Committee addressed the issue of "continuing effects" when declaring the communication inadmissible:

> "The Committee notes that the trial against the author was initiated in 1988 and that the last court ruling was issued in June 1990, that is prior to the entry into force of the Optional Protocol in respect of the State party on 1 January 1992. In light of the fact that the author has not made any specific claims based on such continuing effects of alleged violations of the Covenant during his trial that would on their own constitute a violation of the Covenant, the Committee considers that it is precluded *ratione temporis* from considering the communication" (annex VII, sect. C, para. 6.2).

115. Claims have been declared inadmissible *ratione temporis* in cases Nos. 757/1997 (*Pezoldova v. The Czech Republic*), 872/1999 (*Kurowski v. Poland*), 878/1999 (*Kang v. The Republic of Korea*) and 983/2001 (*Love v. Australia*).

116. During the period under review, the Committee continued to consider a communication that had been submitted before Trinidad and Tobago denounced the Optional Protocol under article 12 of the latter. In case No. 908/2000 (*Evans v. Trinidad and Tobago*), the Committee noted:

> "this case was submitted for consideration before the State party's denunciation of the Optional Protocol became effective on 27 June 2000; in accordance with article 12, paragraph 2, of the Optional Protocol to the Covenant, it continues to be subject to the application of the Optional Protocol" (annex VI, sect. S, para. 9).

The Committee followed the same approach in communication No. 796/1998 (*Rogers v. Jamaica*) submitted before Jamaica withdrew from the Optional Protocol on 23 October 1997, with effect as of 23 January 1998.

(c) Inadmissibility for lack of standing as a victim (Optional Protocol, art. 1)

117. In case No. 890/1999 (*Krausser v. Austria*), the Committee recalled its consistent jurisprudence that it can only examine individual petitions presented by the alleged victims themselves or by duly authorized representatives. It declared the communication inadmissible since

> "the author did not submit any written evidence of his authority to act on behalf of his mother" (annex VII, sect. I, para. 6.4).

The Committee also referred to its jurisprudence that an individual must show compelling grounds for bringing a communication on behalf of another in the absence of an authorization. In case No. 893/1999 (*Sahid v. New Zealand*), the Committee considered that

> "in the absence of special circumstances not demonstrated in the present case, it is inappropriate for the author to bring a claim on behalf of his grandson without expression of assent to such a course by a custodial parent" (annex VI, sect. Q, para. 7.2).

In case No.781/1997 (*Aliev v. Ukraine*), the Committee decided that it would consider only the author's complaint since he did not indicate that he had been authorized to act on his wife's behalf and he did not explain whether his wife was able to submit her own complaint.

118. In case No. 1038/2001 (*Ó Colchúin v. Ireland*), the Committee found that the author could not claim the status of a "victim" within the meaning of article 1 of the Optional Protocol since

> "the author's communication challenges his inability to participate in certain elections in the abstract, i.e. without reference to any particular elections where the author would have been prevented from exercising his right to vote" (annex VII, sect. X, para. 6.3).

119. In case No. 951/2000 (*Kristjánsson v. Iceland*), the author claimed that his conviction for fishing without having secured the necessary entitlement to a quota made him a victim of a violation of article 26 of the Covenant, since the company for which he worked had to purchase a quota entitlement from others who had received quota entitlements free of charge because they were active in the fishing industry. The Committee noted, however, that the author did not own a vessel, nor had he ever requested a quota entitlement under the Fisheries Management Act. He had merely worked as a captain of a vessel that had a fishing licence, and which had acquired a quota entitlement. When the vessel's quota was exhausted and the acquisition of a new quota entitlement proved to be too expensive, he agreed to continue fishing without one, thereby committing a criminal offence under the Fisheries Management Act. In the circumstances, the Committee considered that the author could not claim to be a victim on the basis of his conviction for fishing without quota.

120. In case No. 1169/2003 (*Hom v. The Philippines*), the Committee found:

> "As to the author's claim under article 1 of the Covenant, the Committee refers to its jurisprudence that, for the purposes of a communication under the Optional Protocol, article 1 cannot on its own be the subject of a communication under the Optional Protocol. Moreover, the author has not presented his communication in the context of any claim of a 'people' within the meaning of article 1 of the Covenant. Accordingly, this aspect of the communication falls outside the Optional Protocol *ratione materiae* and *ratione personae*, respectively, and the claim is inadmissible under articles 3 and 1 of the Optional Protocol" (annex VII, sect. EE, para. 4.2).

121. In case No. 1114/2002 (*Kavanagh v. Ireland*), the Committee observed that

> "this claim is in the nature of an *actio popularis*, relating as it does to further actions taken by the State party in respect of third parties rather than the author himself. It follows that the author is not personally a victim" (annex VII, sect. CC, para. 4.3).

(d) Claims not substantiated (Optional Protocol, art. 2)

122. Article 2 of the Optional Protocol provides that "individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration".

123. Although an author does not need to prove the alleged violation at the admissibility stage, he or she must submit sufficient materials substantiating his/her allegation for purposes of admissibility. A "claim" is, therefore, not just an allegation, but an allegation supported by substantiating material. In cases where the Committee finds that the author has failed to substantiate a claim for purposes of admissibility, the Committee has held the communication inadmissible, in accordance with rule 90 (b) of its rules of procedure.

124. Claims have been declared inadmissible for lack of substantiation in cases Nos. 726/1996 (*Zheludkov v. Ukraine*), 743/1997 (*Truong v. Canada*), 757/1997 (*Pezoldova v. The Czech Republic*), 781/1997 (*Aliev v. Ukraine*), 820/1998 (*Rajan v. New Zealand*), 836/1998 (*Gelazauskas v. Lithuania*), 837/1998 (*Kolanowski v. Poland*), 852/1999 (*Borisenko v. Hungary*), 864/1999 (*Ruiz Agudo v. Spain*), 876/1999 (*Yama and Khalid v. Slovakia*), 886/1999 (*Bondarenko v. Belarus*), 887/1999 (*Lyashkevich v. Belarus*), 890/1999 (*Krausser v. Australia*), 908/2000 (*Evans v. Trinidad and Tobago*), 942/2000 (*Jonassen v. Norway*), 953/2000 (*Zündel v. Canada*), 980/2001 (*Hussain v. Mauritius*), 984/2001 (*Shukuru Juma v. Australia*), 987/2001 (*Gombert v. France*), 1001/2001 (*Strik v. The Netherlands*), 1013/2001 (*Boboli v. Spain*), 1014/2001 (*Baban et al. v. Australia*), 1020/2001 (*Pasini v. Australia*), 1021/2002 (*Hiro Balani v. Spain*), 1049/2002 (*Van Puyvelde v. France*), 1082/2002 (*De Clippele v. Belgium*), 1088/2002 (*Veriter v. France*), 1091/2002 (*Perera v. Sri Lanka*), 1114/2002 (*Kavanagh v. Ireland*) and 1142/2002 (*Van Grinsven v. The Netherlands*). Individual opinions were appended to the Committee's Views in respect of case No. 942/2000 (*Jonassen v. Norway*) on the issue of non-substantiation.

125. In cases Nos. 886/1999 (*Bondarenko v. Belarus*) and 887/1999 (*Lyashkevich v. Belarus*), with regard to a claim that the conviction of the author was not based on clear evidence, the Committee

> "recalled that it is generally for the courts of States parties to the Covenant to review facts and evidence in a particular case, unless it can be shown that the evaluation of evidence was clearly arbitrary or amounted to a denial of justice, or that the court otherwise violated its obligation of independence and impartiality" (annex VI , sects. O and P, paras. 9.3 and 8.3).

126. Similar observations were made by the Committee in cases Nos. 726/1996 (*Zheludkov v. Ukraine*), 836/1998 (*Gelazauskas v. Lithuania*) and 1169/2003 (*Hom v. The Philippines*).

127. In case No. 972/2001 (*Kazantzis v. Cyprus*), the Committee held:

> "The author has invoked article 2 of the Covenant together with articles 17, 25 (c) and 26. This raises the question as to whether the fact that the author had no possibility to challenge his non-appointment as a judge amounted to a violation of the right to an effective remedy as provided for by article 2, paragraph 3 (a) and (b), of the Covenant. Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights

> States parties must ensure that individuals also have accessible, effective and enforceable remedies to vindicate those rights. The Committee recalls that article 2 can only be invoked by individuals in conjunction with other articles of the Covenant, and observes that article 2, paragraph 3 (a), stipulates that each State party undertakes 'to ensure that any person whose rights or freedoms are violated shall have an effective remedy'. A literal reading of this provision seems to require that an actual breach of one of the guarantees of the Covenant be formally established as a necessary prerequisite to obtain remedies such as reparation or rehabilitation. However, article 2, paragraph 3 (b), obliges States parties to ensure determination of the right to such remedy by a competent judicial, administrative or legislative authority, a guarantee which would be void if it were not available where a violation had not yet been established. While a State party cannot be reasonably required, on the basis of article 2, paragraph 3 (b), to make such procedures available no matter how unmeritorious such claims may be, article 2, paragraph 3, provides protection to alleged victims if their claims are sufficiently well-founded to be arguable under the Covenant. Considering that the author of the present communication has failed to substantiate, for purposes of admissibility, his claims under articles 17, 25 and 26, his allegation of a violation of article 2 of the Covenant is also inadmissible under article 2 of the Optional Protocol" (annex VII, sect. N, para. 6.6).

(e) Claims not compatible with the provisions of the Covenant (Optional Protocol, art. 3)

128. In case No. 953/2000 (*Zündel v. Canada*), the Committee considered that the author's claim was incompatible with article 19 of the Covenant and therefore inadmissible *ratione materiae* under article 3 of the Optional Protocol:

> "Although the right to freedom of expression, as enshrined in article 19, paragraph 2, of the Covenant, extends to the choice of medium, it does not amount to an unfettered right of any individual or group to hold press conferences within the parliamentary precincts, or to have such press conferences broadcast by others. While it is true that the author had obtained a booking with the Press Gallery for the Charles Lynch Press Conference Room and that this booking was made inapplicable through the motion passed unanimously by Parliament to exclude the author's access to the parliamentary precincts, the Committee notes that the author remained at liberty to hold a press conference elsewhere. The Committee therefore takes the position, after a careful examination of the material before it, that the author's claim, based on the inability to hold a press conference in the Charles Lynch Press Conference Room, falls outside the scope of the right to freedom of expression, as protected under article 19, paragraph 2, of the Covenant" (annex VII, sect. L, para. 8.5).

129. In case No. 693/1996 (*Nam v. The Republic of Korea*), the Committee reviewed its admissibility decision:

> ".... the Committee observes that the communication, as construed by the parties, does not relate to a prohibition of non-governmental publication of textbooks as was originally complained of .... and found admissible by the Committee .... Rather, the communication relates to the author's allegation that there is no process of scrutiny in place for the purpose of submitting non-governmental publications for approval by the authorities, for their use as school textbooks. While affirming that the right to write and publish

> textbooks intended for use at school falls under the protection of article 19 of the Covenant, the Committee notes that the author claims that he is entitled to have the textbook prepared by him scrutinized and approved/rejected by the authorities for use as a textbook in public middle schools. This claim, in the Committee's opinion, falls outside the scope of article 19 and consequently it is inadmissible under article 3 of the Optional Protocol" (annex VII, sect. A, para. 10).

One individual opinion was appended to the Committee's decision.

130. Claims were also declared inadmissible on grounds of incompatibility with the Covenant in cases Nos. 820/1998 (*Rajan v. New Zealand*), 837/1998 (*Kolanowski v. Poland*), 956/2000 (*Piscioneri v. Spain*), 972/2001 (*Kazantzis v. Cyprus*), 980/2001 (*Hussain v. Mauritius*), 984/2001 (*Shukuru Juma v. Australia*), 1001/2001 (*Strik v. The Netherlands*), 1020/2001 (*Cabal and Pasini v. Australia*), 1142/2002 (*Van Grinsven v. The Netherlands*) and 1169/2003 (*Hom v. The Philippines*).

131. Article 3 of the Optional Protocol also provides that a communication may be declared inadmissible on grounds of abuse. Hitherto, the Committee has not determined in a general comment or in its jurisprudence what exactly would constitute an abuse of the right of submission. This jurisprudence remains to be developed. In case No. 1004/2001 (*Estevill v. Spain*), the Committee observed:

> "The only complaint by the author is related to article 14, paragraph 5, of the Covenant, which stipulates that, 'Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by higher tribunal'. The Committee notes that the State party's legal system would have granted the right of appeal if the author had been tried by the High Court of Catalonia. However, it was the author himself who repeatedly insisted that he be tried directly by the Supreme Court. Bearing in mind that the author is a former judge with a great deal of experience, the Committee considers that, by insisting on being tried only by the Supreme Court, the author has renounced his right of appeal. The Committee considers that, in the circumstances, the allegation by the author constitutes an abuse of the right to submit communications, in accordance with article 3 of the Optional Protocol" (annex VII, sect. U, para. 6.2).

(f) The requirement of exhaustion of domestic remedies (Optional Protocol, art. 5, para. 2 (b))

132. Pursuant to article 5, paragraph 2 (b), of the Optional Protocol, the Committee shall not consider any communication unless it has ascertained that the author has exhausted all available domestic remedies. However, it is the Committee's constant jurisprudence that the rule of exhaustion applies only to the extent that those remedies are effective and available. The State party is required to give "details of the remedies which it submitted had been made available to the author in the circumstances of his case, together with evidence that there would be a reasonable prospect that such remedies would be effective" (case No. 4/1977 (*Torres Ramirez v. Uruguay*); reasoning recently reaffirmed in cases Nos. 852/1999 (*Borisenko v. Hungary*) and 900/1999 (*C. v. Australia*)).

133. The rule also provides that the Committee is not precluded from examining a communication if it is established that application of the remedies in question is unreasonably prolonged. In case No. 864/1999 (*Ruiz Agudo v. Spain*), the Committee considered that

> "in the case in question, proceedings had begun in 1983 and no judgement had been handed down until 1994, and that the State party did not substantiate the reason for the delay in its submission. The Committee concluded that, in the circumstances, the domestic remedies had been unreasonably prolonged under the terms of article 5, paragraph 2 (b), of the Optional Protocol and, consequently, that provision did not prevent it from examining the merits of the present communication" (annex VI, sect. L, para. 6.2).

134. In case No. 778/1997 (*Coronel et al. v. Colombia*), the Committee considered that

> "the length of time taken in the judicial proceedings relating to the investigation of the deaths and prosecution of the perpetrators was unjustified. In addition, it recalled that, if the violation that is the subject of the complaint is particularly serious, as is the case with violations of basic human rights, particularly the right to life, remedies of a purely disciplinary and administrative nature cannot be considered sufficient or effective. Furthermore, the compensation proceedings have been unreasonably prolonged" (annex VI, sect. C, para. 6.2).

135. In the period covered by the present report, certain claims were declared inadmissible for failure to pursue available and effective remedies. See cases Nos. 743/1997 (*Truong v. Canada*), 881/1999 (*Collins v. Australia*), 890/1990 (*Krausser v. Austria*), 900/1999 (*C. v. Australia*), 942/2000 (*Jonassen v. Norway*), 953/2000 (*Zündel v. Canada*), 956/2000 (*Piscioneri v. Spain*), 978/2001 (*Dixit v. Australia*), 980/2001 (*Hussain v. Mauritius*), 984/2001 (*Shukuru Juma v. Australia*), 1013/2001 (*Boboli v. Spain*), 1014/2001 (*Baban et al. v. Australia*), 1049/2002 (*Van Puyvelde v. France*), 1082/2002 (*De Clippele v. Belgium*), 1088/2002 (*Veriter v. France*) and 1091/2002 (*Pereira v. Sri Lanka*). Three individual opinions were appended to the Committee's Views in respect of case No. 942/2000 (*Jonassen v. Norway*) on the issue of exhaustion of domestic remedies.

(g) Inadmissibility because of submission to another procedure of international investigation or settlement (Optional Protocol, art. 5, para. 2 (a))

136. Pursuant to article 5, paragraph 2 (a), of the Optional Protocol, the Committee shall ascertain that the same matter is not being examined under another procedure of international investigation or settlement. Upon becoming parties to the Optional Protocol, some States have made a reservation to preclude the Committee's competence if the same matter has already been examined under another procedure. During the period under review, the Committee addressed this issue in cases Nos. 989/2001 (*Kollar v. Austria*), 998/2001 (*Althammer et al. v. Australia*) and 1086/2002 (*Weiss v. Austria*) (see paras. 21-23).

(h) Burden of proof

137. Under the Optional Protocol, the Committee bases its Views on all written information made available by the parties. This implies that if a State party does not provide an answer to an author's allegations, the Committee will give due weight to the uncontested allegations as long

as they are substantiated. In the period under review, the Committee recalled this principle in its Views on cases Nos. 778/1997 (*Coronel et al. v. Colombia*), 836/1998 (*Gelazauskas v. Lithuania*), 838/1998 (*Hendricks v. Guyana*) and 908/2000 (*Evans v. Trinidad and Tobago*).

138. In case No. 757/1997 (*Pezoldova v. The Czech Republic*), the Committee considered that

> "... the State party has not addressed the allegation of the author that she was denied access to documents which were crucial for the correct decision of her case. In the absence of any explanation by the State party, due weight must be given to the author's allegation" (annex VI, sect. B, para. 11.4).

One individual opinion was appended to the Committee's Views in the present case.

(i) Interim measures under rule 86

139. Under rule 86 of the Committee's rules of procedure, the Committee may, after receipt of a communication and before adopting its Views, request a State party to take interim measures in order to avoid irreparable damage to the victim of the alleged violations. The Committee continues to apply this rule on suitable occasions, mostly in cases submitted by or on behalf of persons who have been sentenced to death and are awaiting execution and who claim that they were denied a fair trial. In view of the urgency of such communications, the Committee has requested the States parties concerned not to carry out the death sentences while the cases are under consideration. Stays of execution have specifically been granted in this connection. Rule 86 has also been applied in other circumstances, for instance in cases of imminent deportation or extradition which may involve or expose the author to a real risk of violation of rights protected under the Covenant. For the Committee's reasoning on whether or not to issue a request under rule 86, see the Committee's Views in communication No. 558/1993 (*Canepa v. Canada*).[3]

(j) Breach of Optional Protocol obligations

140. When States parties have disregarded the Committee's decisions under rule 86, the Committee may find that the State party has violated its obligations under the Optional Protocol. In case No. 1086/2002 (*Weiss v. Austria*), the Committee considered that

> "the State party breached its obligations under the Protocol by extraditing the author before the Committee could address the author's allegations of irreparable harm to his Covenant rights. In particular, the Committee is concerned by the sequence of events in this case in that, rather than requesting interim measures of protection directly upon an assumption that irreversible harm could follow the author's extradition, it first sought, under rule 86 of its rules of procedure, the State party's views on the irreparability of harm. In so doing, the State party could have demonstrated to the Committee that extradition would not result in irreparable harm. Interim measures pursuant to rule 86 of the Committee's rules adopted in conformity with article 39 of the Covenant are essential to the Committee's role under the Optional Protocol. Flouting of the rule, especially by irreversible measures such as the execution of the alleged victim or his/her deportation from the country, undermines the protection of Covenant rights through the Optional Protocol" (annex VI, sect. FF, paras. 7.1-7.2).

141. On 24 July 2003, the Committee issued a press release and sent a letter to the Uzbek authorities deploring the execution of six individuals whose cases were pending before the Committee, namely cases Nos. 1170/2003 (*Muzaffar Mirzaev v. Uzbekistan*), 1166/2003 (*Shukrat Andasbaev v. Uzbekistan*), 1165/2003 (*Ulugbek Eshov v. Uzbekistan*), 1162/2003 (*Ilkhon Babadzhanov and Maksud Ismailov v. Uzbekistan*) and 1150/2003 (*Azamat Uteev v. Uzbekistan*). The Committee reminded the State party of its position that it amounts to a grave breach of the Optional Protocol to execute an individual whose case is pending before the Committee, in particular when a request for interim protection under rule 86 of the Committee's rules of procedure has been issued.

2. Substantive issues

(a) The right to life (Covenant, art. 6)

142. Article 6, paragraph 1, protects every human being's inherent right to life. This right shall be protected by law and no one shall be arbitrarily deprived of his life.

143. In case No. 778/1997 (*Coronel et al. v. Colombia*), the Committee concluded that the Human Rights Division of the Attorney-General's Office acknowledged that State security forces had detained and killed seven Colombian nationals in 1993, that the State party had not refuted these facts and it had not taken the necessary measures against the persons responsible for the murder of the victims, resulting in a violation of article 6 of the Covenant (annex VI, sect. C, para. 9.3).

144. In case No. 50/2000 (*Sarma v. Sri Lanka*),

> "as to the possible violation of article 6 of the Covenant, the Committee not[ed] that the author had not asked the Committee to conclude that his son was dead. Moreover, while invoking article 6, the author also ask[ed] for the release of his son, indicating that he had not abandoned hope for his son's reappearance. The Committee consider[ed] that, in such circumstances, it was not for it to appear to presume the death of the author's son … the Committee consider[ed] it appropriate in the present case not to make any finding in respect of article 6" (annex VI, sect. V, para. 9.6).

145. In case No. 838/1998 (*Hendricks v. Guyana*), the Committee found that article 6 had been breached because the author had been executed following a trial where legal assistance was not provided at all stages of criminal proceedings.

146. In case No. 1077/2002 (*Carpo v. The Philippines*), the Committee

> "noted that the offence of murder in the State party's law entails a very broad definition, requiring the killing of another individual. In the present case, the Committee observes that the Supreme Court considered the case to be governed by article 48 of the Revised Penal Code, according to which if a single act constitutes at once two crimes, the maximum penalty for the most serious crime must be applied. The crimes committed by a single act being three murders and an attempted murder, the maximum possible penalty for murder - the death penalty - was imposed automatically by operation of the provisions of article 48. The Committee refers to its jurisprudence that mandatory imposition of

> the death penalty constitutes arbitrary deprivation of life, in violation of article 6, paragraph 1, of the Covenant, in circumstances where the death penalty is imposed without regard being able to be paid to the defendant's personal circumstances of the particular offence. It follows that the automatic imposition of the death penalty upon the authors by virtue of article 48 of the Revised Penal Code violated his rights under article 6, paragraph 1, of the Covenant" (annex VI, sect. EE, para. 8.3).

Two members appended an individual opinion to the Views.

147. In case No. 829/1998 (*Judge v. Canada*), the Committee held

> "Question 1. As Canada has abolished the death penalty, did it violate the author's right to life under article 6, his right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment under article 7, or his right to an effective remedy under article 2, paragraph 3, of the Covenant by deporting him to a State in which he was under sentence of death without ensuring that that sentence would not be carried out?
>
> "In considering Canada's obligations, as a State party which has abolished the death penalty, in removing persons to another country where they are under sentence of death, the Committee recalls its previous jurisprudence in *Kindler v. Canada*. ... [In this case the Committee] considered that as Canada itself had not imposed the death penalty but had extradited the author to the United States to face capital punishment, a State which had not abolished the death penalty, the extradition itself would not amount to a violation by Canada unless there was a real risk that the author's rights under the Covenant would be violated in the United States ... .
>
> "While recognizing that the Committee should ensure both consistency and coherence of its jurisprudence, it notes that there may be exceptional situations in which a review of the scope of application of the rights protected in the Covenant is required, such as where an alleged violation involves that most fundamental of rights - the right to life - and in particular if there have been notable factual and legal developments and changes in international opinion in respect of the issue raised. The Committee is mindful of the fact that the above-mentioned jurisprudence was established some 10 years ago, and that since that time there has been a broadening international consensus in favour of abolition of the death penalty and in States which have retained the death penalty, a broadening consensus not to carry it out. Significantly, the Committee notes that since *Kindler* the State party itself has recognized the need to amend its own domestic law to secure the protection of those extradited from Canada under sentence of death in the receiving State, in the case of *United States v. Burns* ... . The Committee considers that the Covenant should be interpreted as a living instrument and the rights protected under it should be applied in context and in the light of present-day conditions.
>
> "In reviewing its application of article 6, the Committee notes that, as required by the Vienna Convention on the Law of Treaties, a treaty should be interpreted in good faith and in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. Paragraph 1 of article 6, which states that, 'Every human being has the inherent right to life ...', is a general rule: its purpose is to protect life. States parties that have abolished the death penalty have an obligation under this paragraph to so protect in all circumstances. Paragraphs 2 to 6 of article 6 are

evidently included to avoid a reading of the first paragraph of article 6, according to which that paragraph could be understood as abolishing the death penalty as such. This construction of the article is reinforced by the opening words of paragraph 2 ('In countries which have not abolished the death penalty …') and by paragraph 6 ('Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant'). In effect, paragraphs 2 to 6 have the dual function of creating an exception to the right to life in respect of the death penalty and laying down limits on the scope of that exception. Only the death penalty pronounced when certain elements are present can benefit from the exception. Among these limitations are that found in the opening words of paragraph 2, namely, that only States parties that 'have not abolished the death penalty' can avail themselves of the exceptions created in paragraphs 2 to 6. For countries that have abolished the death penalty, there is an obligation not to expose a person to the real risk of its application. Thus, they may not remove, either by deportation or extradition, individuals from their jurisdiction if it may be reasonably anticipated that they will be sentenced to death, without ensuring that the death sentence would not be carried out.

"The Committee acknowledges that by interpreting paragraphs 1 and 2 of article 6 in this way, abolitionist and retentionist States parties are treated differently. But it considers that this is an inevitable consequence of the wording of the provision itself, which, as becomes clear from the *travaux préparatoires*, sought to appease very divergent views on the issue of the death penalty, in an effort at compromise among the drafters of the provision … . It would appear logical, therefore, to interpret the rule in article 6, paragraph 1, in a wide sense, whereas paragraph 2, which addresses the death penalty, should be interpreted narrowly.

"For these reasons, the Committee considers that Canada, as a State party which has abolished the death penalty, irrespective of whether it has ratified the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, violated the author's right to life under article 6, paragraph 1, by deporting him to the United States, where he is under sentence of death, without ensuring that the death penalty would not be carried out. The Committee recognizes that Canada did not itself impose the death penalty on the author. But by deporting him to a country where he was under sentence of death, Canada established the crucial link in the causal chain that would make possible the execution of the author.

"As to the State party's claim that its conduct must be assessed in the light of the law applicable at the time when the alleged treaty violation took place, the Committee considers that the protection of human rights evolves and that the meaning of Covenant rights should in principle be interpreted by reference to the time of examination and not, as the State party has submitted, by reference to the time the alleged violation took place. The Committee also notes that prior to the author's deportation to the United States the Committee's position was evolving in respect of a State party that had abolished capital punishment … from whether capital punishment would, subsequent to removal to another State, be applied in violation of the Covenant to whether there was a real risk of capital punishment as such … . Furthermore, the State party's concern regarding possible retroactivity involved in the present approach has no bearing on the separate issues to be addressed under question 2 below.

> "Question 2. The State party had conceded that the author was deported to the United States before he could exercise his right to appeal the rejection of his application for a stay of his deportation before the Québec Court of Appeal. As a consequence the author was not able to pursue any further remedies that might be available. By deporting the author to a State in which he was under sentence of death before he could exercise all his rights to challenge that deportation, did the State party violate his rights under articles 6, 7 and 2, paragraph 3, of the Covenant?
>
> "As to whether the State party violated the author's rights under articles 6 and 2, paragraph 3, by deporting him to the United States, where he is under sentence of death, before he could exercise his right to appeal the rejection of his application for a stay of deportation before the Québec Court of Appeal and, accordingly, could not pursue further available remedies, the Committee notes that the State party removed the author from its jurisdiction within hours after the decision of the Superior Court of Québec, in what appears to have been an attempt to prevent him from exercising his right of appeal to the Court of Appeal. It is unclear from the submissions before the Committee to what extent the Court of Appeal could have examined the author's case, but the State party itself concedes that as the author's petition was dismissed by the Superior Court for procedural and substantive reasons … the Court of Appeal could have reviewed the judgment on the merits.
>
> "… in the instant case, the Committee finds that, by preventing the author from exercising an appeal available to him under domestic law, the State party failed to demonstrate that the author's contention that his deportation to a country where he faces execution would violate his right to life was sufficiently considered … . Bearing in mind that the State party has abolished capital punishment, the decision to deport the author to a State where he is under sentence of death without affording him the opportunity to avail himself of an available appeal was taken arbitrarily and in violation of article 6, together with article 2, paragraph 3, of the Covenant.
>
> "Having found a violation of article 6, paragraph 1, alone and, read together with article 2, paragraph 3, of the Covenant, the Committee does not consider it necessary to address whether the same facts amount to a violation of article 7 of the Covenant" (annex VI, sect. G, para. 10.1-10.10).

Two individual opinions were appended to the Committee's admissibility decision and one on its Views.

(b) Prohibition of torture and ill-treatment (Covenant, art. 7)

148. In case No. 778/1997 (*Coronel et al. v. Colombia*), the Committee noted that

> "the Attorney-General's Office acknowledged that the victims … had been subjected to treatment incompatible with article 7. Taking into account the circumstances of the disappearance of the four victims and that the State party has not denied that they were subjected to treatment incompatible with that article, the Committee concludes that the four victims were the object of a clear violation of article 7 of the Covenant" (annex VI, sect. C, para. 9.5).

149. In case No. 981/2001 (*Gómez Casafranca v. Peru*), with regard to the author's claims that her son was subjected to ill-treatment while being held at the police station, the Committee noted:

> "... while the author does not provide further information ... the attached copies of the records of the oral proceedings of 30 January 1998 reveal how the victim described in detail before the judge the acts of torture to which he had been subjected. Taking into account the fact that the State party has not provided any additional information in this regard, or initiated an official investigation of the events described, the Committee finds that there was a violation of article 7 of the Covenant" (annex VI, sect. X, para. 7.1).

150. In case No. 950/2000 (*Sarma v. Sri Lanka*), the Committee

> "recogniz[ed] the degree of suffering involved in being held indefinitely without any contact with the outside world, and observ[ed] that, in the present case, the author appear[ed] to have accidentally seen his son some 15 months after the initial detention. He must, accordingly, be considered a victim of a violation of article 7. Moreover, noting the anguish and stress caused to the author's family by the disappearance of his son and by the continuing uncertainty concerning his fate and whereabouts, the Committee consider[ed] that the author and his wife were also victims of violation of article 7 of the Covenant. The Committee is therefore of the opinion that the facts before it revealed a violation of article 7 of the Covenant both with regard to the author's son and with regard to the author's family" (annex VI, sect. V, para. 9.5).

151. In case No. 900/1999 (*C. v. Australia*), the author, an Iranian citizen, had been detained under mandatory immigration detention provisions for several years before being granted refugee status. Over these years, his mental state deteriorated to a point where he suffered serious mental illness. Upon release from immigration detention, the author, under the direct influence of his mental illness, committed a series of crimes, for which he was convicted and sentenced to a term of imprisonment. Thereafter, his deportation to Iran was ordered on the basis that he represented a danger to Australian society. The Committee decided that

> "the continued detention of the author when the State party was aware of the author's mental condition and failed to take the steps necessary to ameliorate the author's mental deterioration constituted a violation of his rights under article 7 of the Covenant".

The Committee further

> "attach[ed] weight to the fact that the author was originally granted refugee status on the basis of a well-founded fear of persecution as an Assyrian Christian, coupled with the likely consequences of a return of his illness. In the Committee's view, the State party has not established that the current circumstances in the receiving State are such that the grant of refugee status no longer holds validity".

The Committee further observed that

> "the AAT [Administrative Appeals Tribunal], whose decision was upheld on appeal, accepted that it was unlikely that the only effective medication (Clorazil) and back-up treatment would be available in Iran, and found the author 'blameless for his mental

> illness' which 'was first triggered while in Australia'. In circumstances where the State party has recognized a protection obligation towards the author, the Committee considers that deportation of the author to a country where it is unlikely that he would receive the treatment necessary for the illness caused, in whole or in part, because of the State party's violation of the author's rights would amount to a violation of article 7 of the Covenant" (annex VI, sect. R, paras. 8.4-8.5).

Three members appended an individual opinion to the Views on this issue.

152. In cases Nos. 886/1999 (*Bondarenko v. Belarus*) and 887/1999 (*Lyashkevich v. Belarus*), the Committee considered that

> "complete secrecy surrounding the date of execution and the place of burial and the refusal to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities' initial failure to notify the author of the scheduled date for the execution of her son, and their subsequent persistent failure to notify her of the location of her son's grave amount to inhumane treatment … in violation of article 7 of the Covenant" (annex VI, sect. O, paras. 10.2 and 9.2, respectively).

(c) Liberty and security of person (Covenant, art. 9, para. 1)

153. Article 9, paragraph 1, of the Covenant guarantees both the right of every person to liberty, i.e. not to be subjected to arbitrary arrest or detention, and the right to one's personal security.

154. In case No. 778/1997 (*Coronel et al. v. Colombia*), the Committee held:

> "the Committee takes note of the authors' allegations that the detentions were illegal in the absence of any arrest warrants. Bearing in mind that the State party has not denied this fact, and since, in the Committee's opinion, the complaint is sufficiently substantiated … the Committee concludes that there has been a violation of article 9 of the Covenant in respect of the seven victims" (annex VI, sect. C, para. 9.4).

155. In case No. 981/2001 (*Gómez Casafranca v. Peru*), with respect to the allegations of a violation of the right of the victim to liberty and security of person and that her son was arrested without a warrant, the Committee

> "regretted[ed] that the State party [had] fail[ed] to provide an explicit response to this claim, merely asserting in general terms that Mr. Gómez Casafranca was arrested in accordance with Peruvian law. The Committee note[d] the author's claim that her son was held for 22 days at the police station, whereas the law provides for a period of 15 days. The Committee consider[ed] that since the State party [had] not contested these claims due weight must be attached to them. Accordingly, the Committee [found] that there was a violation of article 9, paragraphs 1 and 3, of the Covenant" (annex VI, sect. X, para. 7.2).

156. In case No. 900/1999 (*C. v. Australia*), the Committee concluded:

> "In these circumstances, whatever the reasons for the original detention, continuance of immigration detention for over two years without individual justification and without any chance of substantive judicial review was, in the Committee's view, arbitrary and constituted a violation of article 9, paragraph 1" (annex VI, sect. R, para. 8.2.).

Similar findings were made in case No. 1014/2001 (*Baban et al. v. Australia*). Two individual opinions were appended to the Committee's Views.

157. In case No. 950/2000 (*Sarma v. Sri Lanka*), the Committee

> "note[d] the definition of enforced disappearance contained in article 7, paragraph 2 (i), of the Rome Statute of the International Criminal Court ... . Any act of such disappearance constitutes a violation of many of the rights enshrined in the Covenant, including the right to liberty and security of person (art. 9), the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment (art. 7) and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (art. 10). It also violates or constitutes a grave threat to the right to life (art. 6). The facts of the present case clearly illustrate the applicability of article 9 of the Covenant concerning liberty and security of the person. The State party has itself acknowledged that the arrest of the author's son was illegal and a prohibited activity. Not only was there no legal basis for his arrest, there evidently was none for the continuing detention. Such gross violation of article 9 can never be justified. Clearly in the present case, in the Committee's opinion, the facts before it reveal a violation of article 9 in its entirety" (annex VI, sect. V, paras. 9.3 and 9.4).

(d) Right to be brought promptly before a judge (Covenant, art. 9, para. 3)

158. In case No. 852/1999 (*Borisenko v. Hungary*), the Committee noted

> "that the author was detained for three days before being brought before a judicial officer. In the absence of an explanation from the State party on the necessity of detaining the author for this period, the Committee finds a violation of article 9, paragraph 3, of the Covenant" (annex VI, sect. J, para. 7.4).

Two members appended an individual opinion on this issue.

159. In several cases, the Committee considered the right of anyone arrested or detained to be tried within a reasonable time, as set forth in article 9, paragraph 3, of the Covenant. In cases Nos. 838/1998 (*Hendricks v. Guyana*) and 908/2000 (*Evans v. Trinidad and Tobago*), the Committee considered that, in the absence of any justification or satisfactory explanation from the State party, a period ranging from two years and three months to three years between the moment of the authors' arrest and the moment they were brought to trial constituted a violation of article 9, paragraph 3, of the Covenant.

160. In case No. 726/1999 (*Zheludkov v. Ukraine*), the Committee found that

> "the State party has not contested that Mr. Zheludkov was not brought promptly before a judge after he was arrested on a criminal charge, but has stated that he was placed in

> pre-trial detention by decision of the procurator (*prokuror*). The State party has not provided sufficient information showing that the procurator has the institutional objectivity and impartiality necessary to be considered an 'officer authorized to exercise judicial power' within the meaning of article 9, paragraph 3, of the Covenant".

The Committee accordingly found a violation of article 9, paragraph 3 (annex VI, sect. A, para. 8.3).

(e) Right to bring proceedings before a court, in order that that court may decide without delay on the lawfulness of the detention and order release if the detention is not lawful (Covenant, art. 9, para. 4)

161. In case No. 900/1999 (*C. v. Australia*), the Committee held that

> "the court review available to the author was confined purely to a formal assessment of the question whether the person in question was a 'non-citizen' without an entry permit. The Committee observes that there was no discretion for a court … to review the author's detention in substantive terms for its continued justification. The Committee considers that an inability judicially to challenge a detention that was, or had become, contrary to article 9, paragraph 1, constitutes a violation of article 9, paragraph 4" (annex VI, sect. R, para. 8.3).

Two members appended an individual opinion on this issue.

162. In case No. 933/2000 (*Adrien Mundyo Busyo, Thomas Osthudi Wongodi, René Sibu Matubuka et al. v. The Democratic Republic of the Congo*), the Committee noted that

> "Judges René Sibu Matubuka and Benoit Malu Malu were arbitrarily arrested and detained from 18 to 22 December 1998 in an illegal detention centre belonging to the Task Force for Presidential Security. In the absence of a reply from the State party, the Committee notes that there has been an arbitrary violation of the right to liberty of the person under article 9 of the Covenant" (annex VI, sect. T, para. 5.4).

(f) Right to compensation for unlawful arrest or detention (Covenant, art. 9, para. 5)

163. In case No. 856/1999 (*Chambala v. Zambia*), the Committee held that

> "the author's detention for the further two months following the High Court's determination that there were no grounds to hold him in detention was, in addition to being arbitrary in terms of article 9, paragraph 1, also contrary to Zambia domestic law, thus giving rise to a violation of the right to compensation under article 9, paragraph 5" (annex VI, sect. K, para. 7.3).

(g) Treatment during imprisonment (Covenant, art. 10)

164. Article 10, paragraph 1, prescribes that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. In case No. 908/2000 (*Evans v. Trinidad and Tobago*), the Committee noted

> "that the author was detained in solitary confinement on death row for a period of five years in a cell measuring 6 by 9 feet, with no sanitation except for a slop pail, no natural light, being allowed out of his cell only once or twice a week during which he was restrained in handcuffs, and with wholly inadequate food that did not take into account his particular dietary requirements. The Committee considers that these - uncontested - conditions of detention, taken together, amount to a violation of article 10, paragraph 1, of the Covenant. In light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary separately to consider the claims arising under article 7 of the Covenant" (annex VI, sect. S, para. 6.4).

One member appended an individual opinion on this particular issue.

165. In case No. 796/1998 (*Reece v. Jamaica*), concerning the specific conditions and length of the author's detention on death row allegedly violating articles 7 and 10, paragraph 1, the Committee, in the absence of any responses from the State party, adopted, as it has repeatedly found in respect of similar substantiated allegations, similar views.

166. In case No. 878/1999 (*Kang v. The Republic of Korea*), the Committee considered that the author's detention in solitary confinement for a period as long as 13 years, of which more than 8 were after the entry into force of the Optional Protocol, was a measure of such gravity, and of such fundamental impact on the individual in question, that it required the most serious and detailed justification.

> "The Committee considered that confinement for such a lengthy period, apparently on the sole basis of his presumed political opinion, failed to meet that particularly high burden of justification, and constituted at once a violation of article 10, paragraph 1, protecting the inherent dignity of the author, and of paragraph 3, requiring that the essential aim of detention be reformation and social rehabilitation" (annex VI, sect. N, para. 7.3).

167. In case No. 726/1999 (*Zheludkov v. Ukraine*), the Committee noted that while the author had received medical care and underwent hospitalizations during his detention, the State party's authorities denied him access to his medical records, despite his repeated requests. In the absence of any explanation for such denial, the Committee concluded that the consistent and unexplained denial of access to his medical records to Mr. Zheludkov was a sufficient ground for finding a violation of article 10, paragraph 1, of the Covenant. Four members appended an individual opinion to the Views on this issue.

168. In case No. 1020/2001 (*Cabal and Pasini v. Australia*), as to the issues raised by the authors' detention for an hour in a triangular "cage", the Committee: "note[d] the State party's justification that this holding cell was the only one capable of holding two persons at the time, and that the authors requested to be placed together. In the Committee's view, a failure to have a cell sufficiently adequate to hold two persons [was] insufficient explanation for requiring two prisoners to alternately stand and sit, even if only for an hour, within such an enclosure. In the circumstances, the Committee consider[ed] this incident to disclose a violation of article 10, paragraph 1, of the Covenant" (annex VI, sect. DD, para. 8.3). One member appended an individual opinion to the Committee's Views.

(h) Guarantees of a fair hearing (Covenant, art. 14, para. 1)

169. Article 14, paragraph 1, provides for the right to equality before the courts and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. In case No. 1086/2002 (*Weiss v. Austria*), the Committee

> "observe[d] that the author obtained, after submission of the case to the Committee, a stay from the Administrative Court to prevent his extradition until the Court had resolved the author's challenge to the Minister's decision directing his extradition. The Committee observe[d] that although the order to stay was duly communicated to the relevant officials, the author was transferred to United States jurisdiction after several attempts, in violation of the Court's stay. The Court itself, after the event, observed that the author had been removed from the country in violation of the Court's stay on execution and there was no legal foundation for the extradition; accordingly, the proceedings had become moot and deprived of object in the light of the author's extradition, and would not be further pursued. The Committee further note[d] that the Constitutional Court found that the author's inability to appeal an adverse judgement of the Upper Regional Court, in circumstances where the Prosecutor could, and did, appeal an earlier judgement of the Upper Regional Court finding the author's extradition inadmissible, was unconstitutional. The Committee consider[ed] that the author's extradition in breach of a stay issued by the Administrative Court and his inability to appeal an adverse decision of the Upper Regional Court, while the Prosecutor was so able, amount[ed] to a violation of the author's right under article 14, paragraph 1, to equality before the courts, taken together with the right to an effective and enforceable remedy under article 2, paragraph 3, of the Covenant" (annex VI, sect. FF, para. 9.6).

170. In case No. 981/2001 (*Gómez Casafranca v. Peru*), the Committee

> "[took] note of the fact that Mr. Gómez Casafranca was, after first acquitted in 1988, ordered for retrial by a faceless Chamber of the Supreme Court. This alone raise[d] issues under article 14, paragraphs 1 and 2. Taking into account that Mr. Gómez Casafranca was convicted after retrial in 1998, the Committee [took] the view that whatever measures were taken by the Special Criminal Counter-Terrorism Chamber to guarantee Mr. Gómez Casafranca's presumption of innocence, the delay of some 12 years after the original events and 10 years after the first trial, resulted in a violation of the author's right, under article 14, paragraph 3 (c), to be tried without undue delay. In the circumstances of the case, the Committee conclude[d] that there was a violation of article 14 of the right to a fair trail as a whole" (annex VI, sect. X, para. 7.3).

171. In case No. 796/1998 (*Rogers v. Jamaica*), "on the alleged violation of article 14, paragraph 1, in that the trial judge's directions on the evidence to the jury were inadequate, the Committee refer[red] to its previous jurisprudence that it is not for the Committee to review specific instructions to the jury by the trial judge unless it could be ascertained that the instructions were clearly arbitrary or amounted to a denial of justice. In the present case, the Committee observ[ed] that the evidence in the case as well as the judge's directions to the jury were extensively examined upon appeal, and it [did] not discern clear arbitrariness or a denial of justice thereby" (annex VI, sect. E, para. 7.3). In the same case, as to the author's claims of a violation of article 14, paragraph 1, arising from the commutation of his death sentence and the

setting of a seven-year period before parole might arise, the Committee referred to its previous jurisprudence that the commutation process is not one attracting the guarantees of article 14. Nor did the Committee share the view that a substitution of the death penalty with life imprisonment, with a prospect of parole in the future, was a "re-sentencing" tainted with arbitrariness.

172. In case No. 933/2000 (*Adrien Mundyo Busyo, Thomas Osthudi Wongodi, René Sibu Matubuka et al. v. The Democratic Republic of the Congo*), the Committee found:

> "With regard to article 14, paragraph 1, of the Covenant, the Committee notes the absence of any reply from the State party and also notes, on the one hand, that the authors did not benefit from the guarantees to which they were entitled in their capacity as judges and by virtue of which they should have been brought before the Supreme Council of the Judiciary in accordance with the law, and, on the other hand, that the President of the Supreme Court had publicly, before the case had been heard, supported the dismissals that had taken place (see para. 3.8), thus damaging the equitable hearing of the case. Consequently, the Committee considers that those dismissals constitute an attack on the independence of the judiciary protected by article 14, paragraph 1, of the Covenant. The dismissal measures applied to the authors were taken on grounds that cannot be accepted by the Committee as a justification of the failure to respect the established procedures and guarantees that all citizens must be able to enjoy on general terms of equality. In the absence of any reply from the State party, and inasmuch as the Supreme Court, by its ruling on 26 September 2001, has deprived the authors of all remedies by declaring their appeals inadmissible on the grounds that Presidential Decree No. 144 constituted an act of Government, the Committee considers that, in this specific case, the facts show that there has been a violation of article 25 (c) read in conjunction with article 14, paragraph 1, on the independence of the judiciary and article 2, paragraph 1, of the Covenant" (annex VI, sect. T, para. 5.2).

173. In case No. 814/1998 (*Pastukhov v. Belarus*), the Committee noted

> "the author's claim that he could not be removed from the bench since he had, in accordance with the law in force at the time, been appointed a judge on 28 April 1994 for a term of office of 11 years. The Committee also note[d] that Presidential Decree No. 106 of 24 January 1997 was not based on the replacement of the Constitutional Court with a new court but referred to the author in person and the sole reason given in the Presidential Decree for the dismissal of the author was stated as the expiry of his term as Constitutional Court judge, which was manifestly not the case. Furthermore, no effective judicial protections were available to the author to contest his dismissal by the executive."

The Committee found that

> "In these circumstances, ... the author's dismissal from his position as a judge of the Constitutional Court, several years before the expiry of the term for which he had been appointed, constituted an attack on the independence of the judiciary and failed to respect the author's right of access, on general terms of equality, to public service in his country.

> Consequently, there has been a violation of article 25 (c) of the Covenant, read in conjunction with article 14, paragraph 1, on the independence of the judiciary and the provisions of article 2" (annex VI, sect. F, para. 7.3).

Two individual opinions were appended to the Committee's Views.

174. In case No. 781/1997 (*Aliev v. Ukraine*), the Committee held:

> "First, the author alleges that he did not have the services of a counsel during his first five months of detention. The Committee notes that the State party is silent in this regard; it also notes that the copies of the relevant judicial decisions do not address the author's allegation that he was not represented for five months, even though the author had mentioned this allegation in his complaint to the Supreme Court dated 29 April 1997. Considering the nature of the case and questions dealt with during this period, particularly the author's interrogation by police officers and the reconstruction of the crime, in which the author was not invited to participate, the Committee is of the view that the author should have had the possibility of consulting and being represented by a lawyer. Consequently, and in the absence of any relevant information from the State party, the Committee is of the view that the facts before it constitute a violation of article 14, paragraph 1, of the Covenant.
>
> "Secondly, the author alleges that, subsequently, on 17 July 1997, the Supreme Court heard his case in his absence and in the absence of his counsel. The Committee notes that the State party has not challenged this allegation and has not provided any reason for this absence. The Committee finds that the decision of 17 July 1997 does not mention that the author or his counsel was present, but mentions the presence of a procurator. Moreover, it is uncontested that the author had no legal representation in the early stages of the investigations. Bearing in mind the facts before it, and in the absence of any relevant observation by the State party, the Committee considers that due weight must be given to the author's allegations. The Committee recalls its jurisprudence that legal representation must be available at all stages of criminal proceedings, particularly in cases in which the accused incurs capital punishment. Consequently, the Committee is of the view that the facts before it disclose a violation of article 14, paragraph 1, as well as a separate violation of article 14, paragraph 3 (d), of the Covenant" (annex VI, sect. D, paras. 7.2-7.3).

(i) Right to adequate time and facilities for the preparation of one's defence (Covenant, art. 14, para. 3 (b))

175. In case No. 796/1998 (*Rogers v. Jamaica*), with regard to the claim by the author that his right under article 14, paragraph 3 (b), was breached because he allegedly had inadequate time and facilities to prepare his defence at trial and that counsel conducted his defence poorly,

> "the Committee reiterate[ed] its jurisprudence that in such a situation, it would have been incumbent on the author or his counsel to request an adjournment at the beginning of the trial, if it was felt that they had not had sufficient opportunity to properly prepare a defence. The trial transcript [did] not disclose any such application. As to the issues raised by the author's objections to counsel's conduct of the trial, the Committee recall[ed] that a State party cannot be held responsible for the conduct of a defence

lawyer, unless it was or should have been manifest to the judge that the lawyer's behaviour was incompatible with the interest of justice. The Committee [was] of the view that, in the present case, there [was] no indication that counsel's conduct of the trial was manifestly incompatible with his professional responsibilities" (annex VI, sect. E, para. 7.2).

(j) Right to be tried without undue delay (Covenant, art. 14, para. 3 (c))

176. Article 14, paragraph 3 (c), provides that everyone charged with a criminal offence shall be tried without undue delay. In case No. 864/1998 (*Ruiz Agudo v. Spain*), the Committee recalled its position, as reflected in its general comment No. 13 on article 14, which provides that all stages of judicial proceedings must take place without undue delay and that, to make this right effective, a procedure must be available to ensure that this applies in all instances. The Committee "consider[ed] that, in the present case, a delay of 11 years in the judicial process at first instance and of more than 13 years until the rejection of the appeal violates the author's right under article 14, paragraph 3 (c), of the Covenant to be tried without undue delay" (annex VI, sect. L, para. 9.1).

177. In case No. 796/1998 (*Rogers v. Jamaica*), with regard to the claim by the author that his right under article 14, paragraph 3 (c), was breached because of the delay of three years and one month between the filing of his notice of appeal and its eventual disposition, "the Committee not[ed] the particular circumstance of this case that the author lodged his appeal immediately at the close of trial on the day that he was convicted". Noting also that the State party [had] not provided any explanation for the delay or presented any factors by which the delay could be attributed to the author, the Committee consider[ed] that the facts disclosed a violation of article 14, paragraph 3 (c) (annex VI, sect. E, para. 7.5).

178. In case No. 875/1999 (*Filipovich v. Lithuania*), "considering that the investigation ended, according to the information available to the Committee, following the report by the forensic medical commission and that the case was not so complex as to justify a delay of four years and four months, or three years and two months after the preparation of the forensic medical report", the Committee concluded that there was a violation of article 14, paragraph 3 (c) (annex VI, sect. M, para. 7.1).

179. In cases Nos. 838/1998 (*Hendricks v. Guyana*) and 908/2002 (*Evans v. Trinidad and Tobago*), the Committee found that the circumstances of the cases, which revealed a violation of article 9, paragraph 3, also constituted a separate violation of article 14, paragraph 3 (c).

(k) Right to legal assistance (Covenant, art. 14, para. 3 (d)) and right to examine, or have examined, the witnesses against oneself and to obtain the attendance and examination of witnesses on one's behalf under the same conditions as witnesses against oneself (Covenant, art. 14, para. 3 (e))

180. Article 14, paragraph 3 (d), provides for the right to legal defence and free legal assistance. In case No. 852/1999 (*Borisenko v. Hungary*), the author claimed that he was not provided with legal representation from the time of his arrest to his release from detention, which included a hearing on detention at which he had to represent himself. The Committee noted that the State party had confirmed that although it assigned a lawyer to the author, the lawyer failed to appear at the interrogation or at the detention hearing. In this regard, the Committee recalled

that it is incumbent upon the State party to ensure that legal representation provided by the State guarantees effective representation as well as that legal assistance is available at all stages of criminal proceedings. The Committee thus found that the facts before it revealed a violation of article 14, paragraph 3 (d) (annex VI, sect. J, para. 7.5). Similar findings were made in case No. 781/1997 (*Aliev v. Ukraine*).

181. Similarly, in case No. 838/1998 (*Hendricks v. Guyana*), the Committee noted that author's counsel was apparently absent at one stage of the preliminary hearing and that this was not disputed by the State party. The Committee recalled its jurisprudence that, in capital cases, it is axiomatic that legal assistance be available to the accused at all stages of criminal proceedings. It also recalled its decision on communication No. 775/1997 (*Brown v. Jamaica*), adopted on 23 March 1999, in which it decided that a magistrate should not proceed with the deposition of witnesses during a preliminary hearing without allowing the author an opportunity to ensure the presence of his lawyer. The Committee found that the facts before it disclosed a violation of article 14, paragraphs 3 (d) and (e), of the Covenant.[4]

(l) Right to appeal (Covenant, art. 14, para. 5)

182. Article 14, paragraph 5, provides that everyone convicted of a crime shall have the right to have his/her conviction and sentence reviewed by a higher tribunal according to law.

183. In case No. 836/1998 (*Gelazauskas v. Lithuania*), with regard to a claim by the author that his right under article 14, paragraph 5, was breached because he had no possibility to appeal against the judgement whereby he had been sentenced to 13 years' imprisonment for murder, the Committee considered that

> "it is not contested by the State party that the submission of a 'supervisory protest' constitutes an extraordinary remedy depending on the discretionary powers of the Chairperson of the Supreme Court, the Prosecutor General or their deputies. The Committee [was] therefore of the opinion that, in the circumstances, such a possibility is not a remedy that has to be exhausted for purposes of article 5, paragraph 2 (b), of the Covenant. Moreover, ... the Committee consider[ed] that the request for the submission of a 'supervisory protest' [did] not constitute a right to have one's sentence and conviction reviewed by a higher tribunal under article 14, paragraph 5, of the Covenant. ... The Committee, taking into account the author's observations with regard to the extraordinary character and the discretionary nature of the submission of a cassation motion, the absence of response from the State party thereupon, and the form and content of the letters rejecting the applications for a cassation motion, consider[ed] that the material before it sufficiently demonstrates that, in the circumstances of the case, the applications made by the author for a cassation motion ... do not constitute a remedy that has to be exhausted for purposes of article 5, paragraph 2 (b), of the Optional Protocol. Moreover, the Committee ... is of the opinion that this remedy does not constitute a right of review in the sense of article 14, paragraph 5, of the Covenant because the cassation motion cannot be submitted to a higher tribunal as required under the said provision" (annex VI, sect. H, paras. 7.2, 7.5-7.6).

184. In case No. 908/2000 (*Evans v. Trinidad and Tobago*), with regard to a claim concerning a delay of five years and nine months between conviction and the dismissal of his appeal by the Court of Appeal,

> "the Committee recalled its jurisprudence that the rights contained in article 14, paragraphs 3 (c) and 5, read together, confer a right to review of a decision at trial without delay. In *Johnson v. Jamaica*, the Committee considered that, barring exceptional circumstances, a delay of four years and three months was unreasonably prolonged. As a result of these considerations, the Committee finds a violation of article 14, paragraphs 3 (c) and 5, of the Covenant" (annex VI, sect. S, para. 6.3).

185. In cases Nos. 986/2001 (*Semey v. Spain*) and 1007/2001 (*Sineiro Fernandez v. Spain*), reiterating case No. 701/1996 (*Cesáreo Gómez Vásquez v. Spain*), the Committee found that the Supreme Court's review vis-à-vis the author's sentence was not in conformity with article 14, paragraph 5, of the Covenant.

(m) Prohibition of retroactive criminal laws (Covenant, art. 15)

186. In case No. 981/2001 (*Gómez Casafranca v. Peru*), with regard to the author's claims that there was a violation of the principles of non-retroactivity and equality before the law as a result of Act No. 24651 of 6 March 1987, subsequent to the events of the case, the Committee "note[d] that the State party acknowledge[d] that this occurred. While it is true, as asserted by the State party, that acts of terrorism at the time of the events were already offences under Legislative Decree No. 46 of March 1981, it is equally true that Act No. 24651 of 1987 amended the penalties by imposing higher minimum sentences and thereby making the situation of guilty worse. Although Mr. Gómez Casafranca was sentenced to the minimum term of 25 years under the new law, this was more than double compared to the minimum term under the previous law, and the Court gave no explanation as to what would have been the sentence under the old law if still applicable. Accordingly, the Committee [found] that there was a violation of article 15 of the Covenant" (annex VI, sect. X, para. 7.4).

187. In case No. 960/2000 (*Baumgarten v. Germany*), the author, a former Deputy Minister of Defence and Head of Border Troops, was convicted of homicide and attempted homicide of the persons concerned, who, upon attempting to cross the border between the former German Democratic Republic (GDR) and the Federal Republic of Germany (FRG), were shot by border guards or set off mines. The author, who was sentenced to prison, claimed to be the victim of violations of article 15 in particular. The Committee noted that

> "the specific nature of any violation of article 15, paragraph 1, of the Covenant requires it to review whether the interpretation and application of the relevant criminal law by the domestic courts in a specific case appear to disclose a violation of the prohibition of retroactive punishment otherwise not based on law. In doing so, the Committee will limit itself to the question of whether the author's acts, at the material time of commission, constituted sufficiently defined criminal offences under the criminal law of the GDR or under international law.
>
> "The killings took place in the context of a system which effectively denied to the population of the GDR the right freely to leave one's own country. The authorities and individuals enforcing the system were prepared to use lethal force to prevent individuals

> from non-violently exercising their right to leave their own country. The Committee recalls that even when used as a last resort lethal force may only be used, under article 6 of the Covenant, to meet a proportionate threat. The Committee further recalls that States parties are required to prevent arbitrary killings by their own security forces. It finally notes that the disproportionate use of lethal force was criminal according to the general principles of law recognized by the community of nations already at the time when the author committed his acts.
>
> "The State party correctly argues that the killings violated the GDR's obligations under international human rights law, in particular article 6 of the Covenant. It further contends that the same obligations required the prosecution of those suspected of responsibility for the killings. The State party's courts have concluded that these killings violated the homicide provisions of the GDR Criminal Code. Those provisions required to be interpreted and applied in the context of the relevant provisions of the law, such as section 95 of the Criminal Code excluding statutory defences in the case of human rights violations ... and the Border Act regulating the use of force at the border ... The State party's courts interpreted the provisions of the Border Act on the use of force as not excluding from the scope of the crime of homicide the disproportionate use of lethal or potentially lethal force in violation of those human rights obligations. Accordingly, the provisions of the Border Act did not save the killings from being considered by the courts as violating the homicide provisions of the Criminal Code. The Committee cannot find this interpretation of the law and the conviction of the author based on it to be incompatible with article 15 of the Covenant" (annex VI, sect. W, paras. 9.3, 9.4 and 9.5).

(n) Right to family and protection from arbitrary or unlawful interference with home (Covenant, arts. 17 and 23)

188. In case No. 778/1997 (*Coronel et al. v. Colombia*), with regard to a claim from the authors that the military raid on the homes of the victims and their families was illegal, since the soldiers did not have any search or arrest warrants, the Committee took note of the corroborating testimony gathered from witnesses by the Attorney-General's Office showing that the procedures were carried out illegally in the private houses where the victims were staying. In the absence of any explanation from the State party in this regard to justify the action described, the Committee concluded there had been a violation of article 17, paragraph 1, inasmuch as there was unlawful interference in the homes of the victims and their families or in the houses where the victims were present.

189. In case No. 893/1999 (*Sahid v. New Zealand*), with regard to claims from the author that his removal to Fiji would amount to a failure of the State party to protect the family unit and his grandson, the Committee

> "note[d] its earlier decision in *Winata v. Australia* that, in extraordinary circumstances, a State party must demonstrate factors justifying the removal of persons within its jurisdiction that go beyond a simple enforcement of its immigration law in order to avoid a characterization of arbitrariness. In *Winata*, the extraordinary circumstance was the State party's intention to remove the parents of a minor, born in the State party, who had become a naturalized citizen after the required 10 years' residence in that country. In the present case, the author's removal has left his grandson with his mother and her husband

> in New Zealand. As a result, in the absence of exceptional factors, such as those in *Winata*, the Committee finds that the State party's removal of the author was not contrary to his right under article 23, paragraph 1, of the Covenant" (annex VI, sect. Q, para. 8.2).

(o) Freedom of thought, conscience and religion (Covenant, art. 18) and freedom of opinion (Covenant, art. 19)

190. Article 18 protects the right to freedom of thought, conscience and religion. Paragraph 3 of article 18 provides that the freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights of others. Article 19 provides for the right to freedom of opinion and expression. According to paragraph 3 of article 19, these rights may only be restricted as provided by law and when necessary for respect of the rights of reputations of others or for the protection of national security or public order (*ordre public*), or of public health or morals.

191. In case No. 878/1999 (*Kang v. The Republic of Korea*), as to the author's claim that the "ideology conversion system" violated his rights under articles 18, 19 and 26,

> "the Committee not[ed] the coercive nature of such a system, preserved in this respect in the succeeding 'oath of law-abidance system', which [was] applied in discriminatory fashion with a view to altering the political opinion of an inmate by offering inducements of preferential treatment within prison and improved possibilities of parole. The Committee consider[ed] that such a system, which the State party has failed to justify as being necessary for any of the permissible limiting purposes enumerated in articles 18 and 19, restrict[ed] freedom of expression and of manifestation of belief on the discriminatory basis of political opinion and thereby violat[ed] articles 18, paragraph 1, and 19, paragraph 1, both in conjunction with article 26" (annex VI, sect. N, para. 7.2).

(p) Right to have access, on general terms of equality, to public service in one's own country (Covenant, article 25 (c))

192. In case No. 933/2000 (*Adrien Mundyo Busyo, Thomas Osthudi Wongodi, René Sibu Matubuka et al. v. The Democratic Republic of the Congo*), the Committee recalled that the principle of access to public service on general terms of equality implied that the State had a duty to ensure that it did not discriminate against anyone, and that this was all the more applicable to persons employed in the public service and to those who had been dismissed.

193. In case No. 814/1998 (*Pastukhov v. Belarus*), the Committee found that the author's dismissal from his position as a judge of the Constitutional Court, several years before the expiry of the term for which he had been appointed, constituted an attack on the independence of the judiciary and failed to respect the author's right of access, on general terms of equality, to public service in his country. Consequently, the Committee concluded that there had been a violation of article 25 (c) of the Covenant, read in conjunction with article 14, paragraph 1, on the independence of the judiciary and the provisions of article 2 (see paragraph 88). Two individual opinions were appended to the Committee's Views.

(q) The right to equality before the law and the prohibition of discrimination (Covenant, art. 26)

194. Article 26 of the Covenant guarantees equality before the law and prohibits discrimination. At its seventy-sixth session, the Committee again addressed the issue of the restitution of properties confiscated in the Czech Republic during and after the Second World War. In case No. 757/1997 (*Pezoldova v. The Czech Republic*), the Committee noted that the essence of the author's complaint was that the Czech authorities had violated her right to equal treatment by arbitrarily denying her right to restitution on the basis of laws Nos. 229/1991 and 243/1992 with the argument that the properties of her adoptive grandfather were confiscated under law No. 143/1947 and not under Benes Decrees Nos. 12 and 108/1945, and therefore the restitution laws of 1991 and 1992 would not apply. The Committee further noted the author's argument that the State party, until the year 2001, constantly denied her access to the relevant files and archives, so that only then could documents be presented that would prove that, in fact, the confiscation occurred on the basis of the Benes Decrees of 1945 and not of Law No. 143/1947, with the consequence that the author would be entitled to restitution under the laws of 1991 and 1992. Consequently, the Committee found that the author was repeatedly discriminated against in being denied access to relevant documents which could have proved her restitution claims, and that this violated article 26 in conjunction with article 2 of the Covenant. Two individual opinions were appended to the Committee's Views on the discrimination issue.

195. In case No. 941/2000 (*Young v. Australia*), the author claimed that the State party's refusal to grant him a pension on the ground that he did not meet with the definition of "dependant", for having been in a same-sex relationship with another person, violated his rights under article 26 of the Covenant, on the basis of his sexual orientation. The Committee

> "recalls its earlier jurisprudence that the prohibition against discrimination under article 26 comprises also discrimination based on sexual orientation. It recalls that in previous communications the Committee found that differences in the receipt of benefits between married couples and heterosexual unmarried couples were reasonable and objective, as the couples in question had the choice to marry with all the entailing consequences. It transpires from the contested sections of the VEA [Veteran's Entitlement Act] that individuals who are part of a married couple or of a heterosexual cohabiting couple (who can prove that they are in a 'marriage-like' relationship), fulfil the definition of 'member of a couple' and therefore of a 'dependant', for the purpose of receiving pension benefits. In the instant case, it is clear that the author, as a same-sex partner, did not have the possibility of entering into marriage. Neither was he recognized as a cohabiting partner of Mr. C, for the purpose of receiving pension benefits, because of his sex or sexual orientation. The Committee recalls its constant jurisprudence that not every distinction amounts to prohibited discrimination under the Covenant, as long as it is based on reasonable and objective criteria. The State party provides no arguments on how this distinction between same-sex partners, who are excluded from pension benefits under law, and unmarried heterosexual partners, who are granted such benefits, is reasonable and objective, and no evidence which would point to the existence of factors justifying such a distinction has been advanced. In this context, the Committee finds that the State party has violated article 26 of the Covenant by denying the author a pension on the basis of his sex or sexual orientation" (annex VI, sect. U, para. 10.4).

Two individual opinions were appended to the Committee's Views.

196. In case No. 983/2001 (*Love v. Australia*), the authors, engaged by a State-owned company as airline pilots, claimed that they were victims of discrimination on the basis of age since they had been requested to retire, due to a mandatory retirement regime, at 60 years of age. The Committee considered that "age" in principle was covered by the protection against discrimination provided in article 26, and accordingly a distinction had to be justified on reasonable and objective grounds. In the Committee's view, the authors had not shown that, at the time of their dismissals, the mandatory retirement regime, which was aimed at enhancing flight safety, was not based on such grounds. Consequently, the Committee did not find a violation of article 26 of the Covenant. Two individual opinions were appended to the Committee's Views on the discrimination issue.

197. In case No. 998/2001 (*Althammer et al. v. Austria*):

> "The authors claim that that they are victims of discrimination because the abolition of the household benefits affects them, as retired persons, to a greater extent than it affects active employees. The Committee recalls that a violation of article 26 can also result from the discriminatory effect of a rule or measure that is neutral at face value or without intent to discriminate. However, such indirect discrimination can only be said to be based on the grounds enumerated in article 26 of the Covenant if the detrimental effects of a rule or decision exclusively or disproportionately affect persons having a particular race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, rules or decisions with such an impact do not amount to discrimination if they are based on objective and reasonable grounds. In the circumstances of the instant case, the abolition of monthly household payments combined with an increase of children's benefits is not only detrimental for retirees but also for active employees not (yet or no longer) having children in the relevant age bracket, and the authors have not shown that the impact of this measure on them was disproportionate. Even assuming, for the sake of argument, that such impact could be shown, the Committee considers that the measure, as was stressed by the Austrian courts … was based on objective and reasonable grounds. For these reasons, the Committee concludes that, in the circumstances of the instant case, the abolition of monthly household payments, even if examined in the light of previous changes of the Regulations of Service for Employees of the Social Insurance Board, does not amount to discrimination as prohibited in article 26 of the Covenant" (annex VI, sect. AA, para. 10.2).

Two individual opinions were appended to the Committee's Views.

F. Remedies called for under the Committee's Views

198. After the Committee has made a finding of a violation of a provision of the Covenant in its Views under article 5, paragraph 4, of the Optional Protocol, it proceeds to ask the State party to take appropriate steps to remedy the violation, such as commutation of sentence, release, or providing adequate compensation for the violation suffered. When pronouncing on a remedy, the Committee observes that

> "Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State

> party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views."

199. During the period under review and with respect to a case related to an alleged discrimination concerning property restitution in the Czech Republic, the Committee recommended in case No. 757/1997 (*Pezoldova v. The Czech Republic*) that the State party should provide the author with an effective remedy, including an opportunity to file a new claim for restitution or compensation. The Committee also addressed the issue of equality before the law and equal protection of the law more broadly and recommended that "the State party should review its legislation and administrative practices to ensure that all persons enjoy equality before the law as well as the equal protection of the law" (annex VI, sect. B, para. 12.2).

200. In case No. 778/1997 (*Coronel et al. v. Colombia*), the Committee found that, firstly, seven persons were detained and killed by the State security forces and that, secondly, the State party had not taken the necessary measures against the persons responsible for those murders.

It urged "the State party to conclude without delay the investigations into the violation of articles 6 and 7 and to speed up the criminal proceedings against the perpetrators in the ordinary criminal courts" (annex VI, sect. C, para. 10).

201. In case No. 950/2000 (*Sarma v. Sri Lanka*), the Committee decided that

> "the State party is under an obligation to provide the author and his family with an effective remedy, including a thorough and effective investigation into the disappearance and fate of the author's son, his immediate release if he is still alive, adequate information resulting from its investigation, and adequate compensation for the violations suffered by the author's son, the author and his family. The Committee considers that the State party is also under an obligation to expedite the current criminal proceedings and ensure the prompt trial of all persons responsible for the abduction of the author's son under section 356 of the Sri Lankan Penal Code and to bring to justice any other person who has been implicated in the disappearance" (annex VI, sect. V, para. 11).

202. In case No. 1077/2002 (*Carpo v. The Philippines*), the Committee observed that the authors were subject to automatic imposition of the death sentence, that no assessment of the particular circumstances of the case or of the authors had been made, and that the imposition of the death penalty was therefore arbitrary and contrary to article 6 of the Covenant. It recommended that the State party provide the authors with an effective and appropriate remedy, including commutation (annex VI, sect. EE, para. 10).

203. In cases Nos. 886/1999 (*Bondarenko v. Belarus*) and 887/1999 (*Lyashkevich v. Belarus*), the Committee decided that the authorities' initial failure to notify the authors of the scheduled dates for the executions and their subsequent persistent failure to notify the authors of the location of their son's grave amounted to inhumane treatment of the authors. It held that "the State party is under an obligation to provide the author with an effective remedy, including information on the location where her son is buried and compensation for the anguish suffered" (annex VI, sect. O, paras. 11 and 12).

204. In the cases where the Committee found that there had been unreasonable delays both of detention and the time taken to try the victims, the Committee recommended compensation to the victims but also other remedies, depending on the circumstances. In case No. 864/1999 (*Ruiz Agudo v. Spain*), the Committee found a delay of 11 years in the judicial process at first instance and of more than 13 years until the rejection of the appeal. It considered that the State party had the obligation to provide an effective remedy, including compensation for the excessive length of the trial. The Committee recommended that the State party adopt effective measures to prevent proceedings from being unduly prolonged and to ensure that individuals are not obliged to initiate a new judicial action to claim compensation. In case No. 856/1999 (*Chambala v. Zambia*), in view of the fact that the State party had committed itself to pay compensation to the author, the Committee urged the State party to grant as soon as possible compensation for the period that he was arbitrarily detained.

205. In case No. 726/1999 (*Zheludkov v. Ukraine*), the Committee urged the State party to take "immediate steps to ensure that the decisions concerning the extension of custody are taken by an authority having the institutional objectivity and impartiality necessary to be considered an 'officer authorized to exercise judicial power' within the meaning of article 9, paragraph 3, of the Covenant" (annex VI, sect. A, para. 10).

206. In case No. 836/1998 (*Gelazauskas v. Lithuania*), the Committee found a violation of article 14, paragraph 5, of the Covenant. It held that the author should have the opportunity to lodge a new appeal. Should this no longer be possible, the State party should consider granting his release.

207. In cases Nos. 986/2001 (*Semey v. Spain*) and 1007/2001 (*Sineiro Fernandez v. Spain*), the Committee held that the author should be entitled to have his conviction reviewed in conformity with the requirements of article 14, paragraph 5, of the Covenant.

208. In case No. 796/1998 (*Reece v. Jamaica*), the Committee found a violation of articles 10, paragraph 1, and 14, paragraph 3 (c), and that the State party was under an obligation to improve the present conditions of detention of the author, or to release him.

209. In case No. 781/1997 (*Aliev v. Ukraine*), the Committee was of the view that, since the author was not duly represented by a lawyer during the first months of his arrest and during part of his trial, even though he risked being sentenced to death, consideration should be given to his early release.

210. In case No. 981/2001 (*Gómez Casafranca v. Peru*), the Committee found violations of articles 7, 9, paragraphs 1 and 3, 14 and 15, of the Covenant and that the State party was under an obligation to release the author and pay him appropriate compensation.

211. In case No. 878/1999 (*Kang v. The Republic of Korea*), the Committee noted that, although the author had been released, the State party was under an obligation to provide the author with compensation commensurate with the gravity of the breaches found.

212. In case No. 933/2000 (*Adrien Mundyo Busyo, Thomas Osthudi Wongodi, René Sibu Matubuka et al. v. The Democratic Republic of the Congo*), the Committee found a violation of articles 25 (c), 14, paragraph 1, 9 and 2, paragraph 1, of the Covenant, and held that: "the authors are entitled to an appropriate remedy, which should include, inter alia: (a) in the absence

of a properly established disciplinary procedure against the authors, reinstatement in the public service and in their posts, with all the consequences that that implies, or, if necessary, in similar posts; and (b) compensation calculated on the basis of an amount equivalent to the salary they would have received during the period of non-reinstatement. The State party is also under an obligation to ensure that similar violations do not occur in the future and, in particular, that a dismissal measure can be taken only in accordance with the provisions of the Covenant" (annex VI, sect. T, para. 6.2).

213. In case No. 941/2000 (*Young v. Australia*), the Committee concluded that the author, as a victim of a violation of article 26, is entitled to an effective remedy, including the reconsideration of his pension application without discrimination based on his sex or sexual orientation, if necessary through an amendment to the law.

214. In cases where a request for interim measures, pursuant to rule 86 of the Committee's rules of procedure, was transmitted to the State party, the Committee formulated specific recommendations for reparation based on its findings. In case No. 1086/2002 (*Weiss v. Austria*), the Committee found that the State party had breached its obligations under the Optional Protocol by extraditing the author before allowing the Committee to address whether he would thereby suffer irreparable harm, as alleged. It decided that

> "the State party is under an obligation to provide the author with an effective remedy. In the light of the circumstances of the case, the State party is under an obligation to make such representations to the United States authorities as may be required to ensure that the author does not suffer any consequential breaches of his rights under the Covenant, which would flow from the State party's extradition of the author in violation of its obligations under the Covenant and the Optional Protocol. The State party is also under an obligation to avoid similar violations in the future, including by taking appropriate steps to ensure that the Committee's requests for interim measures of protection will be respected" (annex VI, sect. FF, para. 11.1).

215. In case No. 829/1998 (*Judge v. Canada*), where the author was deported from Canada to the United States of America, the Committee concluded that the author was entitled to an appropriate remedy which would include making such representations as are possible to the receiving State to prevent the carrying out of the death penalty on the author.

216. In case No. 900/1999 (*C. v. Australia*), the Committee found that the mandatory immigration detention suffered by the author violated article 9, paragraphs 1 and 4, of the Covenant, and the State party's failure to attend to the author's deteriorating mental health violated article 7, and that to deport him to Iran would amount to a further violation of article 7 of the Covenant. The Committee stated: "the State party is under an obligation to provide the author with an effective remedy. As to violations of articles 7 and 9 suffered by the author during the first period of detention, the State party should pay the author appropriate compensation. As to the proposed deportation of the author, the State party should refrain from deporting the author to Iran. The State party is under an obligation to avoid similar violations in the future" (annex VI, sect. R, para. 10).

217. States' compliance with the Committee's Views is monitored by the Committee through its follow-up procedure, as described in chapter VI of the present report.

Notes

[1] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 40* (A/52/40), vol. I, para. 467.

[2] Ibid., para. 469.

[3] Ibid., vol. II, annex VI, sect. K.

[4] See ibid., *Fifty-fourth Session, Supplement No. 40* (A/54/40), vol. II, annex XI, sect. GG, para. 6.6.

CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

218. From its seventh session, in 1979, to the conclusion of its seventy-eighth session, in August 2003, the Human Rights Committee has adopted 436 Views on communications considered under the Optional Protocol. The Committee found violations in 341 of them.

219. During its thirty-ninth session, in July 1990, the Committee established a procedure whereby it could monitor the follow-up to its Views under article 5, paragraph 4, and it created the mandate of the Special Rapporteur for the follow-up on Views.[1] Mr. Nisuke Ando has been the Special Rapporteur since the Committee's seventy-first session in March 2001.

220. The Special Rapporteur began to request follow-up information from States parties in 1991. Follow-up information has been systematically requested in respect of all Views with a finding of a violation of the Covenant. Attempts to categorize follow-up replies by States parties are necessarily subjective and imprecise; as a result, it is not possible to provide a neat statistical breakdown of follow-up replies. Many of the replies received could be considered satisfactory in that they displayed the State party's willingness to implement the Committee's Views or to offer the applicant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or merely relate to one aspect of them. Certain replies simply indicate that the victim has failed to file a claim for compensation within statutory deadlines and that no compensation can therefore be paid.

221. The remainder of the replies explicitly challenge the Committee's findings on factual or legal grounds, constitute much-belated submissions on the merits of the case, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

222. In many instances, the secretariat has also received information from authors to the effect that the Committee's Views were not implemented. Conversely, in rare instances, the author of a communication has informed the Committee that the State party in fact gave effect to the Committee's recommendations, although the State party did not itself provide that information.

223. The previous annual report of the Committee[2] contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2002. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-seventh and seventy-eighth sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

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* The document symbol A/[session No.]/40 refers to the *Official Record of the General Assembly* in which the case appears; annex VI refers to the present report, volume II.

Angola: Views in one case with findings of violations:

711/1996 - *Dias* (A/55/40); no follow-up reply. See also A/57/40, paragraphs 228 and 231.

Argentina: Views in one case with findings of violations:

400/1990 - *Mónaco de Gallichio* (A/50/40); for follow-up reply, see A/51/40, paragraph 455.

Australia: Views in five cases with findings of violations:

488/1992 - *Toonen* (A/49/40); for follow-up reply, see A/51/40, paragraph 456;

560/1993 - *A.* (A/52/40); for follow-up reply, dated 16 December 1997, see A/53/40, paragraph 491. See also A/55/40, paragraph 605 and A/56/40, paragraph 183;

900/1999 - *C.* (annex VI); for follow-up reply, see paragraph 225 below;

930/2000 - *Winata et al.* (A/56/40); for follow-up replies, see A/56/40, paragraph 232;

983/2001, *Love et al.* (annex VI); follow-up reply not yet due.

Austria: Views in four cases with findings of violations:

415/1990 - *Pauger* (A/47/40); for follow-up reply, see A/52/40, paragraph 524;

716/1996 - *Pauger* (A/54/40); for follow-up reply, see A/55/40, paragraph 606, A/57/40, paragraph 233, and paragraph 226 below;

965/2001 - *Karakurt* (A/57/40); for follow-up reply, see paragraph 227 below;

1086/2002 - *Weiss* (annex VI); for follow-up reply, see paragraph 228 below.

Belarus: Views in four cases with findings of violations:

780/1997 - *Laptsevich* (A/55/40); for follow-up reply, see A/56/40, paragraph 185 and paragraph A/57/40, paragraph 234;

886/1999 - *Bondarenko* (annex VI); follow-up reply not yet received;

887/1999 - *Lyashkevich* (annex VI); follow-up reply not yet received;

921/2000 - *Dergachev*; follow-up reply not yet received.

Bolivia: Views in two cases with findings of violations:

176/1984 - *Peñarrieta* (A/43/40); for follow-up reply, see A/52/40, paragraph 530;

336/1988 - *Fillastre and Bizouarne* (A/47/40); for follow-up reply, see A/52/40, paragraph 531.

Cameroon: Views in two cases with findings of violations:

458/1991 - *Mukong* (A/49/40); follow-up reply remains outstanding. See A/52/40, paragraphs 524 and 532;

630/1995 - *Mazou* (A/56/40); for follow-up reply, see A/57/40, paragraph 235.

Canada: Views in nine cases with findings of violations:

24/1977 - *Lovelace* (in *Selected Decisions*, vol. 1); for State party's follow-up reply, see *Selected Decisions*, volume 2, annex I;

27/1978 - *Pinkney* (in *Selected Decisions*, vol. 1); no follow-up reply received;

167/1984 - *Ominayak* (A/45/40); follow-up reply, dated 25 November 1991, unpublished;

359/1989 - *Ballantyne and Davidson* and 385/1989 - *McIntyre* (A/48/40); follow-up reply, dated 2 December 1993, unpublished;

455/1991 - *Singer* (A/49/40); no follow-up reply required;

469/1991 - *Ng* (A/49/40); follow-up reply, dated 3 October 1994, unpublished;

633/1995 - *Gauthier* (A/54/40); for follow-up reply, see A/55/40, paragraph 607, A/56/40, paragraph 186 and A/57/40, paragraph 236;

694/1996 - *Waldman* (A/55/40); for follow-up reply, see A/55/40, paragraph 608, A/56/40, paragraph 187 and A/57/40, paragraph 237.

Central African Republic: Views in one case with findings of violations:

428/1990 - *Bozize* (A/49/40); for follow-up reply, see A/51/40, paragraph 457.

Colombia: Views in 14 cases with findings of violations:

For the first eight cases and follow-up replies, see A/51/40, paragraphs 439-441 and A/52/40, paragraphs 533-535;

563/1993 - *Bautista* (A/52/40); follow-up reply in paragraph 229 below;

612/1995 - *Arhuacos* (A/52/40); no follow-up reply. Follow-up consultations were held during the sixty-seventh and seventy-fifth sessions;

687/1996 - *Rojas García* (A/56/40); see paragraph 230 below;

778/1997 - *Coronel et al.* (annex VI); see paragraph 231 below;

848/1999 - *Rodríguez Orejuela* (A/57/40); see paragraph 232 below;

859/1999 - *Jiménez Vaca* (A/57/40); see paragraph 233 below.

Croatia: Views in one case with findings of violations:

727/1996 - *Paraga* (A/56/40); for follow-up reply, see A/56/40, paragraph 188 and paragraph 234 below.

Czech Republic: Views in eight cases with findings of violations:

516/1992 - *Simunek et al.* (A/50/40); see A/57/40, paragraph 238 and paragraph 235 below;

586/1994 - *Adam* (A/51/40); for follow-up replies, see A/51/40, paragraph 458. One author (in *Simunek*) has confirmed that the Committee's recommendations were implemented partially; the others complained that their property was not restored to them or that they were not compensated. Follow-up consultations were held during the sixty-first and sixty-sixth sessions (see A/53/40, para. 492 and A/54/40, para. 465); see also A/57/40, paragraph 238;

857/1999 - *Blazek et al.* (A/56/40); see A/57/40, paragraph 238;

765/1997 - *Fábryová* (A/57/40); see A/57/40, paragraph 238 and paragraph 237 below;

774/1997 - *Brok* (A/57/40); see A/57/40, paragraph 238 and paragraph 237 below;

747/1997 - *Des Fours Walderode* (A/57/40); for follow-up reply, see A/57/40, paragraph 238 and paragraph 236 below;

757/1997 - *Pezoldova* (annex VI); follow-up reply not yet received;

946/2000 - *Patera* (A/57/40); see the author's submission, paragraph 238 below.

Democratic Republic of the Congo:

Views in nine cases with findings of violations:

16/1977 - *Mbenge et al.*; see A/57/40, paragraph 239;

90/1981 - *Luyeye*;

124/1982 - *Muteba*;

138/1983 - *Mpandanjila et al.*;

157/1983 - *Mpaka Nsusu* and 194/1985 - *Miango* (*Selected Decisions*, vol. 2);

241/1987 and 242/1987 - *Birindwa and Tshisekedi* (A/45/40);

366/1989 - *Kanana* (A/49/40);

542/1993 - *Tshishimbi* (A/51/40);

641/1995 - *Gedumbe* (A/57/40); no follow-up reply received.

No follow-up reply has been received in respect of any of the above cases, in spite of repeated reminders addressed to the State party. During the fifty-third and fifty-sixth sessions, the Committee's Special Rapporteur could not establish contact with the Permanent Mission of the State party, with a view to discussing follow-up action. On 3 January 1996, he addressed a note verbale to the Permanent Mission of the State party to the United Nations, requesting a follow-up meeting with the State party's Permanent Representative during the fifty-sixth session. There was no reply. On 29 October 2001, during the Committee's seventy-third session, the Special Rapporteur met with representatives of the Permanent Mission, who agreed to transmit the Special Rapporteur's concerns to the capital and provide a written response. No replies have been received.

Dominican Republic:

Views in three cases with findings of violations:

188/1984 - *Portorreal* (in *Selected Decisions*, vol. 2); for State party's follow-up reply, see A/45/40, volume II, annex XII;

193/1985 - *Giry* (A/45/40);

449/1991 - *Mojica* (A/49/40); follow-up reply in the latter two cases has been received but is incomplete in respect of *Giry*. Follow-up consultations with the Permanent Mission of the Dominican Republic to the United Nations were conducted during the fifty-seventh and fifty-ninth sessions (see A/52/40, para. 538). No further reply has been received.

Ecuador:

Views in five cases with findings of violations:

238/1987 - *Bolaños* (A/44/40); for follow-up reply, see A/45/40, volume II, annex XII, section B;

277/1988 - *Terán Jijón* (A/47/40); follow-up reply, dated 11 June 1992, unpublished;

319/1988 - *Cañón García* (A/47/40); no follow-up reply received;

480/1991 - *Fuenzalida* (A/51/40);

481/1991 - *Ortega* (A/52/40); for follow-up reply in the latter two cases, dated 9 January 1998, see A/53/40, paragraph 494. Follow-up consultations with the Permanent Mission of Ecuador to the United Nations Office at Geneva were conducted during the sixty-first session (see A/53/40, para. 493). For further follow-up replies, dated 29 January and 14 April 1999, see A/54/40, paragraph 466.

Equatorial Guinea:

Views in two cases with findings of violations:

414/1990 - *Primo Essono* and 468/1991 - *Oló Bahamonde* (A/49/40). Follow-up reply remains outstanding in both cases, in spite of consultations with the Permanent Mission of Equatorial Guinea to the United Nations during the fifty-sixth and fifty-ninth sessions (see A/51/40, paras. 442-444 and A/52/40, para. 539).

Finland:

Views in five cases with findings of violations:

265/1987 - *Vuolanne* (A/44/40); for follow-up reply, see A/44/40, paragraph 657 and annex XII;

291/1988 - *Torres* (A/45/40); for follow-up reply, see A/45/40, volume II, annex XII, section C;

387/1989 - *Karttunen* (A/48/40); for follow-up reply, dated 20 April 1999, see A/54/40, paragraph 467;

412/1990 - *Kivenmaa* (A/49/40); preliminary follow-up reply, dated 13 September 1994, unpublished; for further follow-up reply, dated 20 April 1999, see A/54/40, paragraph 468;

779/1997 - *Äärelä et al.* (A/57/40); for follow-up reply, see A/57/40, paragraph 240.

France: Views in six cases with findings of violations:

196/1985 - *Gueye et al.* (A/44/40); for follow-up reply see A/51/40, paragraph 459;

549/1993 - *Hopu* (A/52/40); for follow-up reply see A/53/40, paragraph 495;

666/1995 - *Foin* (A/55/40); no follow-up reply required;

689/1996 - *Maille* (A/55/40); no follow-up reply required because the Committee deemed the finding of a violation to be a sufficient remedy, as the impugned law had been changed;

690/1996 and 691/1996 - *Venier* and *Nicolas* (A/55/40); no follow-up reply required because the Committee deemed the finding of a violation to be a sufficient remedy, as the impugned law had been changed.

Georgia: Views in four cases with findings of violations:

623/1995 - *Domukovsky*;

624/1995 - *Tsiklauri*;

626/1995 - *Gelbekhiani*;

627/1995 - *Dokvadze* (A/53/40); for follow-up replies, dated 19 August and 27 November 1998, see A/54/40, paragraph 469.

Guyana: Views in three cases with findings of violations:

676/1996 - *Yasseen and Thomas* (A/53/40); no follow-up reply received. In several letters, the last dated 23 August 1998, the authors' legal representative expresses concern that the Legal Affairs Minister of Guyana had recommended to his Government not to comply with the Committee's decision. In a letter dated 14 June 2000, the father of *Yasseen* informed the Committee that its recommendations had not been fulfilled. In a letter dated 6 November 2000, the same information is provided by the authors' legal representative;

728/1996 - *Sahadeo* (A/57/40); no follow-up reply received;

838/1998 - *Hendriks* (annex VI); no follow-up reply received.

Hungary: Views in three cases with findings of violations:

410/1990 - *Párkányi* (A/47/40); for follow-up reply, see A/52/40, paragraph 524;

521/1992 - *Kulomin* (A/51/40); for follow-up reply, see A/52/40, paragraph 540.

852/1999 - *Borisenko* (annex VI); for follow-up reply, see paragraph 239 below.

Ireland: Views in one case with findings of violations:

819/1998 - *Kavanagh* (A/56/40); for follow-up reply, see A/57/40, paragraph 241 and paragraph 240 below.

Italy: Views in one case with findings of violations:

699/1996 - *Maleki* (A/54/40); for follow-up reply, see A/55/40, paragraph 610.

Jamaica: Views in 93 cases with findings of violations:

Twenty-five detailed follow-up replies received, of which 19 indicate that the State party will not implement the Committee's recommendations, two promise to investigate and one announces the author's release (see A/54/40, para. 470); 36 general replies, indicating merely that the authors' death sentences had been commuted. No follow-up replies in 31 cases. Follow-up consultations with the State party's Permanent Representatives to the United Nations and to the United Nations Office at Geneva were conducted during the fifty-third, fifty-fifth, fifty-sixth and sixtieth sessions. Prior to the Committee's fifty-fourth session, the Special Rapporteur for the follow-up on Views conducted a follow-up fact-finding mission to Jamaica (see A/50/40, paras. 557-562). See further A/55/40, paragraph 611 and below. Note verbale of 4 July 2001 concerning case No. 668/1995 (*Smith and Stewart v. Jamaica*): see A/56/40, paragraph 190;

695/1996 - *Simpson* (A/57/40); follow-up reply received on 18 June 2003, see paragraph 241 below; for counsel's submission, see A/57/40, paragraph 241.

792/1998 - *Higginson* (A/57/40); follow-up reply not yet received.

Latvia: Views in one case with findings of violations:

884/1999 - *Ignatane* (A/56/40); for follow-up reply, see A/57/40, paragraph 243.

Lithuania: Views in one case with findings of violations:

836/1998 - *Gelazauskas* (annex VI); follow-up reply not yet due.

Libyan Arab Jamahiriya: Views in one case with findings of violations:

440/1990 - *El-Megreisi* (A/49/40); follow-up reply remains outstanding. The author has informed the Committee that his brother was released in March 1995. Compensation remains outstanding.

Madagascar: Views in four cases with findings of violations:

49/1979 - *Marais*;

115/1982 - *Wight*;

132/1982 - *Jaona*;

155/1983 - *Hammel* (in *Selected Decisions*, vol. 2); follow-up replies remain outstanding in all four cases; the authors of the two first cases informed the Committee that they were released from detention.

Follow-up consultations with the Permanent Mission of Madagascar to the United Nations were held during the fifty-ninth session (A/52/40, para. 543).

Mauritius: Views in one case with findings of violations:

35/1978 - *Aumeeruddy-Cziffra et al.* (in *Selected Decisions*, vol. 1); for follow-up reply, see Selected *Decisions*, volume 2, annex I.

Namibia: Views in two cases with findings of violations:

760/1997 - *Diergaardt* (A/55/40); for follow-up reply, see A/57/40, paragraph 244;

919/2000 - *Muller and Engelhard* (A/57/40); for follow-up reply, see paragraph 242 below.

Netherlands: Views in six cases with findings of violations:

172/1984 - *Broeks* (A/42/40); follow-up reply, dated 23 February 1995, unpublished;

182/1984 - *Zwaan-de Vries* (A/42/40); follow-up reply, unpublished;

305/1988 - *van Alphen* (A/45/40); for follow-up reply, see A/46/40, paragraphs 707 and 708;

453/1991 - *Coeriel* (A/50/40); follow-up reply, dated 28 March 1995, unpublished;

786/1997 - *Vos* (A/54/40); for follow-up reply, see A/55/40, paragraph 612;

846/1999 - *Jansen-Gielen* (A/56/40); for follow-up reply, see A/57/40, paragraph 245.

New Zealand: Views in one case with findings of violations:

893/1999 - *Sahid* (annex VI); follow-up reply not yet received.

Nicaragua:	Views in one case with findings of violations: 328/1988 - *Zelaya Blanco* (A/49/40); for follow-up reply, see A/56/40, paragraph 192 and A/57/40, paragraph 246.
Norway:	Views in one case with findings of violations: 631/1995 - *Spakmo* (A/55/40); for follow-up reply, see A/55/40, paragraph 613.
Panama:	Views in two cases with findings of violations: 289/1988 - *Wolf* (A/47/40); 473/1991 - *Barroso* (A/50/40). For follow-up replies, dated 22 September 1997, see A/53/40, paragraphs 496 and 497.
Peru:	Views in nine cases with findings of violations: 202/1986 - *Ato del Avellanal* (A/44/40); see paragraph 243 below; 203/1986 - *Muñoz Hermosa* (A/44/40); 263/1987 - *González del Río* (A/48/40); 309/1988 - *Orihuela Valenzuela* (A/48/40); for follow-up reply in these four cases, see A/52/40, paragraph 546; 540/1993 - *Celis Laureano* (A/51/40); follow-up reply remains outstanding; 577/1994 - *Polay Campos* (A/53/40); for follow-up reply, see A/53/40, paragraph 498; 678/1996 - *Gutierrez Vivanco* (A/57/40); for follow-up reply, see paragraph 244 below; 688/1996 - *de Arguedas* (A/55/40); for follow-up reply see paragraph 245 below; 906/1999 - *Chira Vargas-Machuca* (A/57/40); for follow-up reply, see paragraph 244 below; At the seventy-fourth session the Special Rapporteur held consultations with representatives of the State party, who undertook to inform the capital and report to the Committee. No subsequent information has been received.

Philippines: Views in three cases with findings of violations:

788/1997 - *Cagas* (A/57/40); for follow-up reply see paragraph 246 below;

869/1999 - *Piandiong et al.* (A/56/40); no follow-up replies received. The Special Rapporteur held consultations with representatives of the Permanent Mission of the Philippines during the seventy-fourth session. No further information from the State party has been received;

1077/2002 - *Carpo et al.* (annex VI); follow-up reply not yet received.

Republic of Korea: Views in three cases with findings of violations:

518/1992 - *Sohn* (A/50/40); follow-up reply remains outstanding (see A/51/40, paragraphs 449 and 450; A/52/40, paragraphs 547 and 548);

574/1994 - *Kim* (A/54/40); no follow-up reply received;

628/1995 - *Park* (A/54/40); for follow-up reply, see A/54/40, paragraph 471.

Russian Federation: Views in two cases with findings of violations:

770/1997 - *Gridin* (A/55/40); for follow-up reply, see A/57/40, paragraph 248;

763/1997 - *Lantsova* (A/57/40); for follow-up reply, see paragraph 247 below.

Saint Vincent and the Grenadines: Views in one case with findings of violations:

806/1998 - *Thompson* (A/56/40); no follow-up reply received.

Senegal: Views in one case with findings of violations:

386/1989 - *Famara Koné* (A/50/40); for follow-up reply, see A/51/40, paragraph 461. See also summary record of the 1619th meeting, held on 21 October 1997 (CCPR/C/SR.1619).

Sierra Leone: Views in three cases with findings of violations:

839/1998 - *Mansaraj et al.* (A/56/40);

840/1998 - *Gborie et al.* (A/56/40);

841/1998 - *Sesay et al.* (A/56/40); for follow-up replies, see A/57/40, paragraph 249.

Slovakia: Views in one case with findings of violations:

923/2000 - *Mátyus* (A/57/40); for follow-up reply, see paragraph 248 below.

Spain: Views in three cases with findings of violations:

493/1992 - *Griffin* (A/50/40); follow-up reply, dated 30 June 1995, unpublished, in fact challenges Committee's findings;

526/1993 - *Hill* (A/52/40); for follow-up reply, see A/53/40, paragraph 499, A/56/40, paragraph 196 and paragraph 249 below;

701/1996 - *Gómez Vásquez* (A/55/40); for follow-up reply see A/56/40, paragraphs 197 and 198 and A/57/40, paragraph 250. During the seventy-fifth session, the Special Rapporteur met with a representative of the State party who undertook to inform the capital and report in writing; see also paragraph 250 below.

Sri Lanka: Views in one case with findings of violations:

916/2000 - *Jayawardena* (A/57/40); for follow-up reply, see paragraph 251 below.

Suriname: Views in eight cases with findings of violations:

146/1983 and 148-154/1983 - *Baboeram et al.* (in *Selected Decisions*, vol. 2); consultations held during the fifty-ninth session (see A/51/40, paragraph 451, and A/52/40, paragraph 549); for follow-up reply, see A/53/40, paragraphs 500-501. For follow-up consultations during the Committee's sixty-eighth session, see A/55/40, paragraph 614.

Togo: Views in four cases with findings of violations:

422-424/1990 - *Aduayom et al.*;

505/1992 - *Ackla* (A/51/40); for follow-up replies, see A/56/40, paragraph 199 and A/57/40, paragraph 251.

Trinidad and Tobago: Views in 23 cases with findings of violations:

Follow-up replies received in respect of *Pinto* (cases Nos. 232/1987 and 512/1992), *Shalto* (case No. 447/1991), *Neptune* (case No. 523/1992) and *Seerattan* (case No. 434/1990). For follow-up replies in respect of cases Nos. 362/1989 - Soogrim (A/48/40), 845/1998 - *Kennedy* (A/57/40) and 899/1999 - *Francis et al.* (A/57/40), as well as additional reply on *Neptune*, see paragraphs 252-254 below. Follow-up replies on the remainder of the cases are outstanding. Follow-up consultations were conducted during the sixty-first session (A/53/40, paras. 502-507); see also A/51/40, paragraphs 429, 452 and 453 and A/52/40, paragraphs 550-552.

Ukraine: Views in one case with findings of violations:

726/1996 - *Zheludkov* (annex VI); for follow-up reply see paragraph 255 below.

Uruguay: Views in 45 cases with findings of violations:

43 follow-up replies received, dated 17 October 1991, unpublished. Follow-up reply, dated 31 May 2000, concerning case No. 110/1981 (*Viana Acosta*), granting payment of US$ 120,000 to Mr. Viana. Follow-up replies on two Views remain outstanding: 159/1983 - *Cariboni* (in *Selected Decisions*, vol. 2) and 322/1988 - *Rodríguez* (A/49/40); see also A/51/40, paragraph 454.

Venezuela: Views in one case with findings of violations:

156/1983 - *Solórzano* (in *Selected Decisions*, vol. 2); follow-up reply, dated 21 October 1991, unpublished.

Zambia: Views in five cases with findings of violations:

314/1988 - *Bwalya* (A/48/40); follow-up reply; dated 3 April 1995, unpublished;

326/1988 - *Kalenga* (A/48/40); follow-up reply, dated 3 April 1995, unpublished;

390/1990 - *Lubuto* (A/51/40);

768/1997 - *Mukunto* (A/54/40); follow-up replies remain outstanding despite consultations of the Special Rapporteur with representatives of the Permanent Mission on 20 July 2001 (see A/56/40, paragraph 200, A/57/40, paragraph 253);

821/1998 - *Chongwe* (A/56/40); follow-up reply, dated 23 January 2001, challenging the Committee's Views, alleging non-exhaustion of domestic remedies by Mr. Chongwe. By letter of 1 March 2001, the author indicated that the State party has not taken any measures pursuant to the Committee's Views. See also A/56/40, paragraph 200 and A/57/40, paragraph 254. A South African NGO, acting on the author's behalf, confirmed this information on 16 June 2003.

Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

224. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties that have addressed preliminary follow-up replies to the Special Rapporteur to conclude their

investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

225. **Australia**: with regard to case No. 900/1999 - *C.* (annex VI), the State party provided an interim response by note verbale of 10 February 2003. It stated that every effort was being made to resolve the situation as quickly as possible, but, given the complex nature of the issues involved, high-level consultation among government authorities was required. To date, no further information has been received. On 11 March 2003, counsel informed the Committee that the State party had taken no measures to give effect to its Views and that the author continued to be detained.

226. **Austria**: case No. 716/1996 - *Pauger* (A/54/40): counsel reiterated, by letter of 25 November 2002, that the author has still not been provided with an effective remedy.

227. Case No. 965/2001 - *Karakurt* (A/57/40): the State party informed the Committee on 21 September 2002 that the original version of the Views was published on the homepage of the Constitutional Law Department of the Federal Chancellery and that a German translation was being prepared; the Views became known to the general public through reports in major newspapers and press conferences given by the workers' representative body. The State party stated, however, that as two cases raising similar issues were currently pending before the European Court of Human Rights and before the European Court of Justice, it would await their outcome before deciding what steps to take.

228. Case No. 1086/2002 - *Weiss* (annex VI): on 27 May 2003, counsel submitted a copy of a motion addressed, on the author's behalf, to the Minister of Justice. Counsel recalled that under the Committee's Views, Austrian authorities were obliged to address the competent United States authorities. Counsel sought the Committee's assistance in securing the State party's timely compliance with this recommendation.

229. **Colombia**: case No.563/1993 - *Bautista* (A/52/40): on 25 October 2002, the State party informed the Committee that in order to prevent similar violations from occurring in future, two laws were adopted (Laws 589 and 599/2000) which criminalize genocide, torture and enforced disappearance. The State party further noted that other laws and decrees had been adopted to ensure compliance with the Committee's Views, in particular Law 288/1996. A payment of damages in the amount of 36,935,300 Colombian pesos was made to the author, in compliance with the Committee's Views.

230. Case No. 687/1996 - *Rojas García* (A/56/40): the State party informed the Committee, by note verbale of 29 October 2002, that by resolution No. 1 of 3 May 2002, it decided to apply Law 288/1996 in the author's case.

231. Case No. 778/1997 - *Coronel et al.* (annex VI): the State party informed the Committee, by note verbale of 21 February 2003, that the Committee's Views were forwarded to the competent State authorities (Presidential Programme of Human Rights, Ministry of Justice, Office of the Attorney-General, Defence Ministry and National Police).

232. Case No. 848/1999 - *Rodríguez Orejuela* (A/57/40): on 5 November 2002, the State party requested the Committee to reconsider and review its decision. The State party claimed that it did not receive the last submission of the author, dated 23 April 2002, which was considered in the Committee's Views. According to the State party, its right to procedural guarantees was not respected, in violation of the Optional Protocol and rule 91, paragraph 6, of the Committee's rules of procedure. By letters of 25 November 2002 and 16 December 2002, the author informed the Committee that the State party refused to comply with the Committee's Views. Since the adoption of the Views, he was transferred to the High Security Section of Combita prison, where he alleged that he was subjected to cruel and inhuman treatment, and that he is unable to communicate confidentially with his counsel. According to the author, on 14 April 2002, a judge ordered his release on parole, but the authorities refused to implement this decision.

233. Case No. 859/1999 - *Jiménez Vaca* (A/57/40): by note of 1 November 2002, the State party disagreed with the Committee's decision and requested its reconsideration and revision. According to the State party, the Committee did not take note of its comments of 22 April 2002, in violation of the procedural guarantees offered by article 5 of the Optional Protocol and rule 94 of the Committee's rules of procedures. The State party presented new arguments and did not accept the finding of a violation of article 12 by the Committee. Author's counsel informed the Committee on 22 October 2002 and on 3 June 2003 that he and his client had received no information from the State party about the implementation of the Committee's recommendations.

234. **Croatia**: 727/1996 - *Paraga* (A/56/40): the State party informed the Committee, by note verbale of 29 October 2002, that the author had filed a request with the Ministry of Justice for compensation of material and non-material damage suffered as a result of unjustified detention in the amount of HRK 1 million, and that the Ministry of Justice had not issued any decision. Following proceedings before the Municipal Court of Zagreb, the Court recognized that the entire time spent in custody should be counted as a basis for claiming non-pecuniary damages, but it disputed the amount of compensation requested by the author. On the material claims, a preliminary hearing was held on 5 February 2002 and 18 April 2002; the author was heard as a party and asked to produce evidence. A new hearing was expected. Concerning proceedings before the Municipal Court of Split, the State party noted that the author had never approached the Ministry of Justice with any request for damages.

235. **Czech Republic**: case No. 516/1992 - *Simunek et al.* (A/50/40): by letter of 15 July 2003, the authors expressed the hope that the Committee would assist them in securing the implementation of its Views.

236. Case No. 747/1997 - *Des Fours Walderode* (A/57/40): the author informed the Committee, by letter of 3 June 2002, that on 22 May 2002, the Foreign Ministry had informed his lawyer that the Government wanted to wait for the outcome of the reopened procedure. The author expressed disagreement with this approach.

237. Cases Nos. 765/1997 - *Fábryová* and 774/1997 - *Brok* (A/57/40): the State party informed the Committee, by note verbale of 17 October 2002, that the restitution claims of the authors were being dealt with through a programme for the compensation of individuals to mitigate property injustices suffered by Holocaust victims. The aim of the programme was to compensate individuals who were deprived of their real estate during the German occupation of

territory now belonging to the Czech Republic, as this property had not been returned to them under the legal restitution regulations and international agreements, nor had they been compensated in any other way. The programme was announced on 26 June 2001 and the deadline for submitting applications was 31 December 2001. The Government allocated CZK 100 million to the programme. The State party added that it would inform the Committee about the results of the compensation procedure.

238. Case No. 946/2000 - *Patera* (A/57/40): the author affirmed, by letter dated 2 January 2003, that none of the Committee's recommendations had been complied with by the State party. On 23 October 2002, he petitioned the Government, asking for information about the measures undertaken by the State party to comply with the Committee's Views. After several further requests, the Government responded that his petition had been forwarded to the Ministry of Justice. On 18 November 2002, the author submitted a written petition to the Ministry of Justice asking for the previously requested information and asking to meet the Minister of Justice, without success.

239. **Hungary**: case No. 852/1999 - *Borisenko* (annex VI): on 5 February 2003, the State party expressed its disagreement with the Committee's Views. A copy of the State party's full submission is kept on file with the secretariat. The Committee's Views were translated and placed on the web page of the Ministry of Justice.

240. **Ireland**: case No. 819/1998 - *Kavanagh* (A/56/40; see also annex VI): by letter of 25 February 2003, counsel noted that the State party, in its follow-up submission of 1 August 2001, enclosed only an interim report by the Government's Committee on the Review of the Offences against the State Act. This interim report dealt with the Views of the Committee in the case and made suggestions for amending the legislation to avoid future breaches of the Covenant. Counsel considered that the Government did not address nor take into account the opinion of several members of the Committee urging review of the Offences against the State Act, including the opinion of the then Chairperson, who felt that none of the measures suggested would remedy the problem. The full report was published in May 2002. The section dealing with the issues raised by the Committee in the case remained unchanged. Since then, the State party had given no indication of the steps it envisaged taking to avoid further violations of the Covenant. Legislation had recently been introduced which would amend the Offences against the State Act, but the draft contained nothing on this issue. The author added that the State party had taken no action to publicize the Committee's Views.

241. **Jamaica**: case No. 695/1996 - *Devon Simpson* (A/57/40): by note verbale of 18 June 2003, the State party informed the Committee that Mr. Simpson had complained to the prison authorities about health problems and had received medical attention. To date he had had 25 medical appointments, which was consistent with prison regulations and the United Nations Standard Minimum Rules for the Treatment of Prisoners; his conditions of detention were improved, and he was removed from the St. Catherine District Prison to the South Camp Road Correctional Centre - allegedly the best facility on the island - in September 2002. The State party contended that it was for the local courts to decide on Mr. Simpson's parole eligibility.

242. **Namibia**: case No. 919/2000 - *Muller and Engelhard* (A/57/40): the State party informed the Committee, by note verbale of 23 October 2002, that it had informed the authors, through their counsel, that they could, under the terms of the Aliens Act 1937, assume as family

name the surname of the wife. The Government published the Views on the web site of the Human Rights and Documentation Centre of the University of Namibia, a body devoted to human rights education and information. As far as the State party's Government was concerned, it could not dictate to the Namibian courts, including the Supreme Court, as regards cost awards in matters before them.

243. **Peru**: case No. 202/1986 - *Ato del Avellanal* (A/44/40): the author informed the Committee, by letters of 15 August, 16 and 30 September, 15 and 27 October and 30 November 2002, that the State party had still not implemented the Committee's Views.

244. Cases Nos. 678/1996 - *Gutíerrez Vivanco* (A/57/40) and 906/2000 - *Chira Vargas-Machuca*: the State party, by note verbale of 1 October 2002, requested an extension of the 90 days for the submission of its follow-up replies. No further submission has been received since then.

245. Case No. 688/1996 - *de Arguedas* (A/55/40): on 11 December 2002, the State party informed the Committee that further to a decision of Criminal Court 28 of Lima, the author was released on 6 December 2002.

246. **Philippines**: case No. 788/1997 - *Cagas et al.* (A/57/40): the authors informed the Committee, by letters of 22 October and 4 November 2002, that the Committee's Views had not been published. The presiding judge of the Regional Court allegedly consistently refused to rule on the case.

247. **Russian Federation**: case No. 763/1997 - *Lantsova* (A/57/40): by note verbale of 16 October 2002, the State party informed the Committee that from an internal investigation held in 1995 in the detention centre where Mr. Lantsov died, it transpired that between 7 March and 6 April 1995, the deceased did not request medical assistance nor ask his cellmates to do so; that was confirmed by the statements of his fellow prisoners and of the medical assistants. Mr. Lantsov requested medical help only on 6 April 1995 and was hospitalized soon thereafter, after examination. Under the Committee's Views, the State party was obliged to investigate the causes of the death of Mr. Lantsov; the State party objected that such an inquiry had already been held at the time of the death, in accordance with the law. An independent commission of medical experts did not find any illegal actions by the medical personnel of the centre; the doctors questioned testified that sudden complications leading to death could occur in a situation like Mr. Lantsov's. A copy of the State party's full submission is on record with the secretariat.

248. **Slovakia**: case No. 923/2000 - *Mátyus*: on 31 October 2002, the State party acknowledged that the author's rights under article 25 of the Covenant had been violated and recalled that, as far as the author was concerned, the Committee had decided that the finding of a violation was sufficient remedy. The State party noted that the Views had been transmitted to the Constitutional Court, the Attorney-General's Office and other relevant ministries and State administrative bodies. After a detailed review of the applicable legal regulations, the State party concluded that the violation of the author's rights was caused not by inappropriate or discriminatory regulations, but by the improper application of the regulations by the competent local administration. Thus, no amendment to the legal regulations would be needed. A copy of the full text of the follow-up reply is on file with the secretariat.

249. **Spain**: case No. 526/1993 - *Hill* (A/52/40): on 10 October 2002, the authors provided a copy of an article from *El País* newspaper stating that the Supreme Court had implemented the Committee's Views.

250. Case No. 701/1996 - *Gómez Vásquez* (A/55/40): by letter of 13 May 2002, the author's counsel provided a copy of the judgement of the Constitutional Court dated 3 April 2002, which denied direct effect to the Committee's Views in the case. According to counsel, the Supreme Court had requested the Government to consider amending the law. By letters of 26 April 2002 and 5 September 2002, he informed the Committee that the Views had still not been implemented; he provided a copy of the Criminal Procedure Law, as amended following the Committee's Views, stating that the right to a judicial review of sentences was not included. By letter of 4 March 2003, he informed the Committee that on 8 January 2002, he had filed an *amparo* proceeding with the Constitutional Court.

251. **Sri Lanka**: case No. 916/2000 - *Jayawardena* (A/57/40): the State party informed the Committee, by note verbale of 29 October 2002, that the Government was looking actively into the Committee's Views. It requested an extension for the Government to conclude its investigations and to give effect to the Views on the case. No further reply has been received since that date.

252. **Trinidad and Tobago**: case No. 362/1989 - *Soogrim* (A/48/40): the author informed the Committee, by letters of 20 March 2002 and 16 December 2002, that the Committee's Views had still not been implemented and that he remained in prison. He requested the Committee to take the necessary steps to secure implementation of its recommendations.

253. Case No. 523/1992 - *Neptune* (A/51/40): the author informed the Committee, by letters of 15 April 2002 and 17 December 2002, that the Committee's Views had still not been implemented. He remains imprisoned.

254. Cases Nos. 845/1999, *Kennedy* (A/57/40) and 899/1999, *Francis et al.* (A/57/40): the State party informed the Committee, by notes verbales of 25 July 2002 and 3 September 2002, that the Committee's Views had been transmitted to the competent authorities. No further submission has been received since that date.

255. **Ukraine**: case No. 726/1996 - *Zheludkov* (annex VI): the State party informed the Committee, by note verbale of 29 January 2003, that following an exhaustive examination by the Attorney-General's Office, the author's conviction was considered lawful and well-founded, with no proof of torture during investigation having been found. The State party did acknowledge violations of the applicable procedure during the preliminary investigation; however, according to the State party, those violations did not affect the lawfulness of the judgement. The State party further considered unfounded the Committee's Views in relation to article 9, paragraph 3. It referred to jurisprudence of the European Court, in which the Court declared that the Regional Attorney is an officer authorized by law to exercise judicial power; the principal criterion considered by the European Court was the independence of the attorney in relation to the executive power. According to the State party, under article 157 of the Ukrainian Criminal Procedure Code, the attorney is independent from all other State powers. Accordingly, the State party noted that it would not implement the Committee's Views. A full copy of the State party's submission is on file with the secretariat.

Concern over the effectiveness of follow-up; positive developments

256. The Committee reiterates its deep concern about the increasing number of cases where States parties fail to implement the Committee's Views, or even to inform the Committee within the requested time frame of 90 days as to the measures taken. The Committee recalls that States parties to the Optional Protocol have an obligation to provide an effective remedy under article 2 of the Covenant.

257. The Committee expresses once again its regret that its recommendation, formulated in its previous reports, to the effect that at least one follow-up mission per year be budgeted by the Office of the United Nations High Commissioner for Human Rights has still not been implemented. At the same time, the Committee welcomes the fact that OHCHR has made the budgetary allocation allowing for the recruitment of one full-time staff member to service the follow-up mandate. This should enhance the timely conduct of follow-up activities under the Optional Protocol.

Notes

[1] *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40* (A/45/40), vol. II, annex XI.

[2] Ibid., *Fifty-seventh Session, Supplement No. 40* (A/57/40), vol. I, chap. VI.

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

258. Over a period of some time, the Committee has given thought to means by which it may provide for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. This chapter provides, for the first time, an overview of the Committee's activities in this area.

Framework for follow-up activities

259. In its recently revised rules of procedure (CCPR/C/3/Rev.6 of 24 April 2001), the Committee set out two new rules dealing with the approach that may be taken. In rules 70, paragraph 5 and 70A, as corrected, the Committee provided that it "may request the State party to give priority to such aspects of its concluding observations as it may specify" and that in respect of such cases "it shall establish a procedure to consider replies by the State party on those aspects and to decide what consequent action, including the date set for the next periodic report, may be appropriate".

260. Similarly, in its general comment No. 30 on reporting obligations of States parties under article 40 of the Covenant, adopted on 16 July 2002, the Committee observed that:

> "5. After the Committee has adopted concluding observations, a follow-up procedure shall be employed in order to establish, maintain or restore a dialogue with the State party. For this purpose and in order to enable the Committee to take further action, the Committee shall appoint a Special Rapporteur, who will report to the Committee.
>
> "6. In the light of the report of the Special Rapporteur, the Committee shall assess the position adopted by the State party and, if necessary, set a new date for the State party to submit its next report."

261. So as to determine the practical methods of work implementing these provisions, the Committee, on 21 March 2002, took initial decisions on its working methods for follow-up on concluding observations. These decisions were published in annex III (vol. I) of the Committee's last annual report to the General Assembly.[1] In particular, the Committee foresaw the appointment of a Special Rapporteur for follow-up on concluding observations in order to administer these methods on behalf of the Committee.

Special Rapporteur for follow-up on concluding observations

262. At its seventy-fifth session, in July 2002, the Committee appointed Mr. Maxwell Yalden as its Special Rapporteur for follow-up on concluding observations. The Special Rapporteur presented the first report on his activities to the Committee at its seventy-sixth session, in October 2002, and has reported at each session since. At the Committee's seventy-sixth session, on the occasion of the Committee's second meeting with States parties, on 24 October 2002, the Special Rapporteur introduced to the States parties present the methods that had been adopted.

263. The Special Rapporteur for follow-up on concluding observations assesses the information provided by the State party in conjunction with such other relevant information as may be provided to him on the issues in question, and makes recommendations to the Committee on further steps it may wish to take with respect to the State party in question. In the event that

the State party has only addressed some of the issues and concerns raised by the Committee, the Special Rapporteur requests the State party to respond on the outstanding issues before making a recommendation with respect to that State party to the Committee.

264. In the event that the one-year period elapses without a response from the State party, the Special Rapporteur contacts the State party in writing by way of reminder and, should there be no response, requests a personal meeting with representatives of the State party in order to solicit the information sought. If it is not received, the Committee notes this fact in its annual report to the General Assembly.

Overview of the application of the follow-up procedure

265. At its seventy-first session, in March 2001, the Committee began its routine practice of identifying, at the conclusion of each set of concluding observations, a limited number of priority concerns that had arisen in the course of the dialogue with the State party. The Committee has identified such priority concerns in all but one of the reports of States parties examined since the seventy-first session. Accordingly, it requested that State party to provide, within one year, the information sought. At the same time, the Committee provisionally fixed the date for the submission of the next periodic report.

266. As the Committee's mechanism for monitoring follow-up to concluding observations was only set up in July 2002, this chapter describes the results of this procedure from its initiation at the seventy-first session in March 2001 to the close of the seventy-eighth session in August 2003. These are described session by session, but in future reports this overview will limit itself to an annual assessment of the procedure.

State party	Date information due	Date reply received	Further action
Seventy-first session (March 2001)			
Croatia	6 April 2002	22 April 2003	Decision on further action to be taken by the Committee at its seventy-ninth session.
Dominican Republic	6 April 2002	3 May 2002	At its seventy-sixth session, the Committee decided to take no further action.
Syrian Arab Republic	6 April 2002	28 May 2002	At its seventy-sixth session, the Committee decided to take no further action.
Uzbekistan	6 April 2002	30 September 2002 (partial reply)	Complete response requested.
Venezuela	6 April 2002	19 September 2002 (partial reply); 7 May 2003 (further partial reply)	Decision on further action to be taken by the Committee at its seventy-ninth session.

State party	Date information due	Date reply received	Further action
Seventy-second session (July 2001)			
Democratic People's Republic of Korea	26 July 2002	30 July 2002	At its seventy-sixth session, the Committee decided to take no further action.
Czech Republic	25 July 2002	9 December 2002 (partial reply); 24 July 2003 (further reply)	Decision on further action to be taken by the Committee at its seventy-ninth session.
Guatemala	25 July 2002	23 July 2003 (partial reply); 24 July 2003 (further reply)	Decision on further action to be taken by the Committee at its seventy-ninth session.
Netherlands	25 July 2002	9 April 2003 (interim reply)	At its seventy-eighth session, the Committee noted the State party's interim reply.
Monaco	25 July 2002	7 March 2003	At its seventy-seventh session, the Committee decided to take no further action.
Seventy-third session (October 2001)			
Azerbaijan	2 November 2002	12 November 2002	At its seventy-seventh session, the Committee decided to take no further action.
United Kingdom of Great Britain and Northern Ireland	1 November 2002	7 November 2002	At its seventy-seventh session, the Committee decided to take no further action.
Switzerland	1 November 2002	4 November 2002	At its seventy-seventh session, the Committee decided to take no further action.
Ukraine	1 November 2002	4 September 2002	At its seventy-sixth session, the Committee decided to take no further action.

State party	Date information due	Date reply received	Further action
Seventy-fourth session (March 2002)			
Georgia	3 April 2003	15 March 2003	At its seventy-eighth session, the Committee decided to take no further action.
Hungary	3 April 2003	9 April 2003	At its seventy-eighth session, the Committee decided to take no further action.
Sweden	3 April 2003	6 May 2003	At its seventy-eighth session, the Committee requested its Special Rapporteur to clarify certain issues with the State party arising from its response.
Seventy-fifth session (July 2002)			
Republic of Moldova	25 July 2003	-	-
Viet Nam	25 July 2003	29 July 2002 (partial reply); 23 July 2003 (further reply)	At its seventy-eighth session, the Committee decided to take no further action.
Yemen	25 July 2003	-	-

Assessment of the follow-up procedure

267. At this early point, any evaluation of the utility of the follow-up procedure established is necessarily of limited scope. Nevertheless, the Committee has been encouraged by the degree of cooperation from States parties. All of the 17 States parties in respect of which requests for follow-up information had fallen due by the beginning of the Committee's seventy-eighth session have provided complete or partial responses.

268. In addition, the Committee participated in the first Pilot Workshop for Dialogue on the Concluding Observations of the Human Rights Committee, held in Quito, from 27 to 29 August 2002, which addressed a number of issues arising by way of follow-up to concluding observations. The Committee welcomes the agreement of the participants to take steps towards strengthening this aspect of the Committee's work (see chap. I, para. 23).

269. To date, the Committee has decided not to take further action, such as adjusting the date by which the next periodic report of the State party should be submitted, in respect of the States parties whose follow-up replies it has examined. The Committee regards the process of submission of further follow-up information, which information is made public on the web site of the Office of the High Commissioner for Human Rights along with the State party's report, the List of Issues and the Concluding Observations adopted by the Committee, as a valuable further step in enhancing the effectiveness of the Committee's dialogue with the State party. The Committee welcomes the efforts taken by States parties to respond to the issues identified in its concluding observations, and regards this step forming the foundation for the consideration of a State party's subsequent periodic report.

Note

[1] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40* (A/57/40).

Annex I

STATES PARTIES TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND TO THE OPTIONAL PROTOCOLS AND STATES WHICH HAVE MADE THE DECLARATION UNDER ARTICLE 41 OF THE COVENANT AS AT 8 AUGUST 2003

A. States parties to the International Covenant on Civil and Political Rights (149)

State party	Date of receipt of the instrument of ratification	Date of entry into force
Afghanistan	24 January 1983[a]	24 April 1983
Albania	4 October 1991[a]	4 January 1992
Algeria	12 September 1989	12 December 1989
Angola	10 January 1992[a]	10 April 1992
Argentina	8 August 1986	8 November 1986
Armenia	23 June 1993[a]	[b]
Australia	13 August 1980	13 November 1980
Austria	10 September 1978	10 December 1978
Azerbaijan	13 August 1992[a]	[b]
Bangladesh	7 September 2000	7 December 2000
Barbados	5 January 1973[a]	23 March 1976
Belarus	12 November 1973	23 March 1976
Belgium	21 April 1983	21 July 1983
Belize	10 June 1996[a]	10 September 1996
Benin	12 March 1992[a]	12 June 1992
Bolivia	12 August 1982[a]	12 November 1982
Bosnia and Herzegovina	1 September 1993[c]	6 March 1992
Botswana	8 September 2000	8 December 2000
Brazil	24 January 1992[a]	24 April 1992
Bulgaria	21 September 1970	23 March 1976
Burkina Faso	4 January 1999[a]	4 April 1999
Burundi	9 May 1990[a]	9 August 1990
Cambodia	26 May 1992[a]	26 August 1992
Cameroon	27 June 1984[a]	27 September 1984
Canada	19 May 1976[a]	19 August 1976
Cape Verde	6 August 1993[a]	6 November 1993
Central African Republic	8 May 1981[a]	8 August 1981
Chad	9 June 1995[a]	9 September 1995
Chile	10 February 1972	23 March 1976
Colombia	29 October 1969	23 March 1976

State party	Date of receipt of the instrument of ratification	Date of entry into force
Congo	5 October 1983[a]	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Côte d'Ivoire	26 March 1992[a]	26 June 1992
Croatia	12 October 1992[c]	8 October 1991
Cyprus	2 April 1969	23 March 1976
Czech Republic	22 February 1993[c]	1 January 1993
Democratic People's Republic of Korea	14 September 1981[a]	14 December 1981
Democratic Republic of the Congo	1 November 1976[a]	1 February 1977
Denmark	6 January 1972	23 March 1976
Djibouti	5 November 2002[a]	5 February 2003
Dominica	17 June 1993[a]	17 September 1993
Dominican Republic	4 January 1978[a]	4 April 1978
Ecuador	6 March 1969	23 March 1976
Egypt	14 January 1982	14 April 1982
El Salvador	30 November 1979	29 February 1980
Equatorial Guinea	25 September 1987[a]	25 December 1987
Eritrea	22 January 2002[a]	22 April 2002
Estonia	21 October 1991[a]	21 January 1992
Ethiopia	11 June 1993[a]	11 September 1993
Finland	19 August 1975	23 March 1976
France	4 November 1980[a]	4 February 1981
Gabon	21 January 1983[a]	21 April 1983
Gambia	22 March 1979[a]	22 June 1979
Georgia	3 May 1994[a]	[b]
Germany	17 December 1973	23 March 1976
Ghana	7 September 2000	7 December 2000
Greece	5 May 1997[a]	5 August 1997
Grenada	6 September 1991[a]	6 December 1991
Guatemala	6 May 1992[a]	6 August 1992
Guinea	24 January 1978	24 April 1978
Guyana	15 February 1977	15 May 1977
Haiti	6 February 1991[a]	6 May 1991
Honduras	25 August 1997	25 November 1997
Hungary	17 January 1974	23 March 1976
Iceland	22 August 1979	22 November 1979

State party	Date of receipt of the instrument of ratification	Date of entry into force
India	10 April 1979[a]	10 July 1979
Iran, Islamic Republic of	24 June 1975	23 March 1976
Iraq	25 January 1971	23 March 1976
Ireland	8 December 1989	8 March 1990
Israel	3 October 1991[a]	3 January 1992
Italy	15 September 1978	15 December 1978
Jamaica	3 October 1975	23 March 1976
Japan	21 June 1979	21 September 1979
Jordan	28 May 1975	23 March 1976
Kazakhstan[d]		
Kenya	1 May 1972[a]	23 March 1976
Kuwait	21 May 1996[a]	21 August 1996
Kyrgyzstan	7 October 1994[a]	[b]
Latvia	14 April 1992[a]	14 July 1992
Lebanon	3 November 1972[a]	23 March 1976
Lesotho	9 September 1992[a]	9 December 1992
Libyan Arab Jamahiriya	15 May 1970[a]	23 March 1976
Liechtenstein	10 December 1998[a]	10 March 1999
Lithuania	20 November 1991[a]	20 February 1992
Luxembourg	18 August 1983	18 November 1983
Madagascar	21 June 1971	23 March 1976
Malawi	22 December 1993[a]	22 March 1994
Mali	16 July 1974[a]	23 March 1976
Malta	13 September 1990[a]	13 December 1990
Mauritius	12 December 1973[a]	23 March 1976
Mexico	23 March 1981[a]	23 June 1981
Monaco	28 August 1997	28 November 1997
Mongolia	18 November 1974	23 March 1976
Morocco	3 May 1979	3 August 1979
Mozambique	21 July 1993[a]	21 October 1993
Namibia	28 November 1994[a]	28 February 1995
Nepal	14 May 1991	14 August 1991
Netherlands	11 December 1978	11 March 1979
New Zealand	28 December 1978	28 March 1979
Nicaragua	12 March 1980[a]	12 June 1980

State party	Date of receipt of the instrument of ratification	Date of entry into force
Niger	7 March 1986[a]	7 June 1986
Nigeria	29 July 1993[a]	29 October 1993
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Paraguay	10 June 1992[a]	10 September 1992
Peru	28 April 1978	28 July 1978
Philippines	23 October 1986	23 January 1987
Poland	18 March 1977	18 June 1977
Portugal	15 June 1978	15 September 1978
Republic of Korea	10 April 1990[a]	10 July 1990
Republic of Moldova	26 January 1993[a]	[b]
Romania	9 December 1974	23 March 1976
Russian Federation	16 October 1973	23 March 1976
Rwanda	16 April 1975[a]	23 March 1976
Saint Vincent and the Grenadines	9 November 1981[a]	9 February 1982
San Marino	18 October 1985[a]	18 January 1986
Senegal	13 February 1978	13 May 1978
Serbia and Montenegro[c]	12 March 2001	12 June 2001
Seychelles	5 May 1992[a]	5 August 1992
Sierra Leone	23 August 1996[a]	23 November 1996
Slovakia	28 May 1993[c]	1 January 1993
Slovenia	6 July 1992[c]	25 June 1991
Somalia	24 January 1990[a]	24 April 1990
South Africa	10 December 1998[a]	10 March 1999
Spain	27 April 1977	27 July 1977
Sri Lanka	11 June 1980[a]	11 September 1980
Sudan	18 March 1986[a]	18 June 1986
Suriname	28 December 1976[a]	28 March 1977
Sweden	6 December 1971	23 March 1976
Switzerland	18 June 1992[a]	18 September 1992
Syrian Arab Republic	21 April 1969[a]	23 March 1976
Tajikistan	4 January 1999[a]	[b]
Thailand	29 October 1996[a]	29 January 1997
The former Yugoslav Republic of Macedonia	18 January 1994[c]	18 April 1994
Togo	24 May 1984[a]	24 August 1984

State party	Date of receipt of the instrument of ratification	Date of entry into force
Trinidad and Tobago	21 December 1978[a]	21 March 1979
Tunisia	18 March 1969	23 March 1976
Turkmenistan	1 May 1997[a]	[b]
Uganda	21 June 1995[a]	21 September 1995
Ukraine	12 November 1973	23 March 1976
United Kingdom of Great Britain and Northern Ireland	20 May 1976	20 August 1976
United Republic of Tanzania	11 June 1976[a]	11 September 1976
United States of America	8 June 1992	8 September 1992
Uruguay	1 April 1970	23 March 1976
Uzbekistan	28 September 1995	[b]
Venezuela	10 May 1978	10 August 1978
Viet Nam	24 September 1982[a]	24 December 1982
Yemen	9 February 1987[a]	9 May 1987
Zambia	10 April 1984[a]	10 July 1984
Zimbabwe	13 May 1991[a]	13 August 1991

Note: In addition to the States parties listed above, the Covenant continues to apply in the Hong Kong Special Administrative Region of China and the Macau Special Administrative Region of China.[f]

B. States parties to the Optional Protocol (104)

Algeria	12 September 1989[a]	12 December 1989
Angola	10 January 1992[a]	10 April 1992
Argentina	8 August 1986[a]	8 November 1986
Armenia	23 June 1993[a]	23 September 1993
Australia	25 September 1991[a]	25 December 1991
Austria	10 December 1987	10 March 1988
Azerbaijan	27 November 2001	27 February 2002
Barbados	5 January 1973[a]	23 March 1976
Belarus	30 September 1992[a]	30 December 1992
Belgium	17 May 1994[a]	17 August 1994
Benin	12 March 1992[a]	12 June 1992
Bolivia	12 August 1982[a]	12 November 1982
Bosnia and Herzegovina	1 March 1995	1 June 1995
Bulgaria	26 March 1992[a]	26 June 1992
Burkina Faso	4 January 1999[a]	4 April 1999

State party	Date of receipt of the instrument of ratification	Date of entry into force
Cameroon	27 June 1984[a]	27 September 1984
Canada	19 May 1976[a]	19 August 1976
Cape Verde	19 May 2000[a]	19 August 2000
Central African Republic	8 May 1981[a]	8 August 1981
Chad	9 June 1995	9 September 1995
Chile	28 May 1992[a]	28 August 1992
Colombia	29 October 1969	23 March 1976
Congo	5 October 1983[a]	5 January 1984
Costa Rica	29 November 1968	23 March 1976
Côte d'Ivoire	5 March 1997	5 June 1997
Croatia	12 October 1995[a]	
Cyprus	15 April 1992	15 July 1992
Czech Republic	22 February 1993[c]	1 January 1993
Democratic Republic of the Congo	1 November 1976[a]	1 February 1977
Denmark	6 January 1972	23 March 1976
Djibouti	5 November 2002[a]	5 February 2003
Dominican Republic	4 January 1978[a]	4 April 1978
Ecuador	6 March 1969	23 March 1976
El Salvador	6 June 1995	6 September 1995
Equatorial Guinea	25 September 1987[a]	25 December 1987
Estonia	21 October 1991[a]	21 January 1992
Finland	19 August 1975	23 March 1976
France	17 February 1984[a]	17 May 1984
Gambia	9 June 1988[a]	9 September 1988
Georgia	3 May 1994[a]	3 August 1994
Germany	25 August 1993	25 November 1993
Ghana	7 September 2000	7 December 2000
Greece	5 May 1997[a]	5 August 1997
Guatemala	28 November 2000	28 February 2001
Guinea	17 June 1993	17 September 1993
Guyana[g]	10 May 1993[a]	10 August 1993
Hungary	7 September 1988[a]	7 December 1988
Iceland	22 August 1979[a]	22 November 1979
Ireland	8 December 1989	8 March 1990
Italy	15 September 1978	15 December 1978

State party	Date of receipt of the instrument of ratification	Date of entry into force
Kyrgyzstan	7 October 1995[a]	7 January 1996
Latvia	22 June 1994[a]	22 September 1994
Lesotho	7 September 2000	7 December 2000
Libyan Arab Jamahiriya	16 May 1989[a]	16 August 1989
Liechtenstein	10 December 1998[a]	10 March 1999
Lithuania	20 November 1991[a]	20 February 1992
Luxembourg	18 August 1983[a]	18 November 1983
Madagascar	21 June 1971	23 March 1976
Malawi	11 June 1996	11 September 1996
Mali	24 October 2001	24 January 2002
Malta	13 September 1990[a]	13 December 1990
Mauritius	12 December 1973[a]	23 March 1976
Mexico	15 March 2002	15 June 2002
Mongolia	16 April 1991[a]	16 July 1991
Namibia	28 November 1994[a]	28 February 1995
Nepal	14 May 1991[a]	14 August 1991
Netherlands	11 December 1978	11 March 1979
New Zealand	26 May 1989[a]	26 August 1989
Nicaragua	12 March 1980[a]	12 June 1980
Niger	7 March 1986[a]	7 June 1986
Norway	13 September 1972	23 March 1976
Panama	8 March 1977	8 June 1977
Paraguay	10 January 1995[a]	10 April 1995
Peru	3 October 1980	3 January 1981
Philippines	22 August 1989[a]	22 November 1989
Poland	7 November 1991[a]	7 February 1992
Portugal	3 May 1983	3 August 1983
Republic of Korea	10 April 1990[a]	10 July 1990
Romania	20 July 1993[a]	20 October 1993
Russian Federation	1 October 1991[a]	1 January 1992
Saint Vincent and the Grenadines	9 November 1981[a]	9 February 1982
San Marino	18 October 1985[a]	18 January 1986
Senegal	13 February 1978	13 May 1978
Serbia and Montenegro[c]	6 September 2001	6 December 2001
Seychelles	5 May 1992[a]	5 August 1992

State party	Date of receipt of the instrument of ratification	Date of entry into force
Sierra Leone	23 August 1996[a]	23 November 1996
Slovakia	28 May 1993[c]	1 January 1993
Slovenia	16 July 1993[a]	16 October 1993
Somalia	24 January 1990[a]	24 April 1990
South Africa	28 August 2002	28 November 2002
Spain	25 January 1985[a]	25 April 1985
Sri Lanka[a]	3 October 1997	3 January 1998
Suriname	28 December 1976[a]	28 March 1977
Sweden	6 December 1971	23 March 1976
Tajikistan	4 January 1999[a]	4 April 1999
The former Yugoslav Republic of Macedonia	12 December 1994[a]	12 March 1995
Togo	30 March 1988[a]	30 June 1988
Turkmenistan[b]	1 May 1997[a]	1 August 1997
Uganda	14 November 1995	14 February 1996
Ukraine	25 July 1991[a]	25 October 1991
Uruguay	1 April 1970	23 March 1976
Uzbekistan	28 September 1995	28 December 1995
Venezuela	10 May 1978	10 August 1978
Zambia	10 April 1984[a]	10 July 1984

Note: Jamaica denounced the Optional Protocol on 23 October 1997, with effect from 23 January 1998. Trinidad and Tobago denounced the Optional Protocol on 26 May 1998 and re-acceded on the same day, subject to a reservation, with effect from 26 August 1998. Following the Committee's decision in case No. 845/1999 (*Kennedy v. Trinidad and Tobago*) of 2 November 1999, declaring the reservation invalid, Trinidad and Tobago again denounced the Optional Protocol on 27 March 2000, with effect from 27 June 2000. Cases pending against Jamaica and Trinidad and Tobago are still under examination before the Committee.

C. States parties to the Second Optional Protocol, aiming at the abolition of the death penalty (49)

Australia	2 October 1990[a]	11 July 1991
Austria	2 March 1993	2 June 1993
Azerbaijan	22 January 1999[a]	22 April 1999
Belgium	8 December 1998	8 March 1999
Bosnia and Herzegovina	16 March 2001	16 June 2001

State party	Date of receipt of the instrument of ratification	Date of entry into force
Bulgaria	10 August 1999	10 November 1999
Cape Verde	19 May 2000[a]	19 August 2000
Colombia	5 August 1997	5 November 1997
Costa Rica	5 June 1998	5 September 1998
Croatia	12 October 1995[a]	12 January 1996
Cyprus	10 September 1999	10 December 1999
Denmark	24 February 1994	24 May 1994
Djibouti	5 November 2002[a]	5 February 2003
Ecuador	23 February 1993[a]	23 May 1993
Finland	4 April 1991	11 July 1991
Georgia	22 March 1999[a]	22 June 1999
Germany	18 August 1992	18 November 1992
Greece	5 May 1997[a]	5 August 1997
Hungary	24 February 1994[a]	24 May 1994
Iceland	2 April 1991	11 July 1991
Ireland	18 June 1993[a]	18 September 1993
Italy	14 February 1995	14 May 1995
Liechtenstein	10 December 1998	10 March 1999
Lithuania	27 March 2002	26 June 2002
Luxembourg	12 February 1992	12 May 1992
Malta	29 December 1994	29 March 1995
Monaco	28 March 2000[a]	28 June 2000
Mozambique	21 July 1993[a]	21 October 1993
Namibia	28 November 1994[a]	28 February 1995
Nepal	4 March 1998	4 June 1998
Netherlands	26 March 1991	11 July 1991
New Zealand	22 February 1990	11 July 1991
Norway	5 September 1991	5 December 1991
Panama	21 January 1993[a]	21 April 1993
Paraguay	28 July 2003	28 October 2003
Portugal	17 October 1990	11 July 1991
Romania	27 February 1991	11 July 1991
Serbia and Montenegro[c]	6 September 2001[a]	6 December 2001
Seychelles	15 December 1994[a]	15 March 1995
Slovakia	22 June 1999[a]	22 September 1999

State party	Date of receipt of the instrument of ratification	Date of entry into force
Slovenia	10 March 1994	10 June 1994
South Africa	28 August 2002[a]	28 November 2002
Spain	11 April 1991	11 July 1991
Sweden	11 May 1990	11 July 1991
Switzerland	16 June 1994[a]	16 September 1994
The former Yugoslav Republic of Macedonia	26 January 1995[a]	26 April 1995
Turkmenistan	11 January 2000[a]	11 April 2000
United Kingdom of Great Britain and Northern Ireland	10 December 1999	10 March 2000
Uruguay	21 January 1993	21 April 1993
Venezuela	22 February 1993	22 May 1993

D. States which have made the declaration under article 41 of the Covenant (47)

State party	Valid from	Valid until
Algeria	12 September 1989	Indefinitely
Argentina	8 August 1986	Indefinitely
Australia	28 January 1993	Indefinitely
Austria	10 September 1978	Indefinitely
Belarus	30 September 1992	Indefinitely
Belgium	5 March 1987	Indefinitely
Bosnia and Herzegovina	6 March 1992	Indefinitely
Bulgaria	12 May 1993	Indefinitely
Canada	29 October 1979	Indefinitely
Chile	11 March 1990	Indefinitely
Congo	7 July 1989	Indefinitely
Croatia	12 October 1995	Indefinitely
Czech Republic	1 January 1993	Indefinitely
Denmark	23 March 1976	Indefinitely
Ecuador	24 August 1984	Indefinitely
Finland	19 August 1975	Indefinitely
Gambia	9 June 1988	Indefinitely
Germany	28 March 1976	10 May 2006
Guyana	10 May 1993	Indefinitely
Hungary	7 September 1988	Indefinitely

State party	Valid from	Valid until
Iceland	22 August 1979	Indefinitely
Ireland	8 December 1989	Indefinitely
Italy	15 September 1978	Indefinitely
Liechtenstein	10 March 1999	Indefinitely
Luxembourg	18 August 1983	Indefinitely
Malta	13 September 1990	Indefinitely
Netherlands	11 December 1978	Indefinitely
New Zealand	28 December 1978	Indefinitely
Norway	23 March 1976	Indefinitely
Peru	9 April 1984	Indefinitely
Philippines	23 October 1986	Indefinitely
Poland	25 September 1990	Indefinitely
Republic of Korea	10 April 1990	Indefinitely
Russian Federation	1 October 1991	Indefinitely
Senegal	5 January 1981	Indefinitely
Slovakia	1 January 1993	Indefinitely
Slovenia	6 July 1992	Indefinitely
South Africa	10 March 1999	Indefinitely
Spain	30 January 1998	Indefinitely
Sri Lanka	11 June 1980	Indefinitely
Sweden	23 March 1976	Indefinitely
Switzerland	18 September 1992	18 September 2002
Tunisia	24 June 1993	Indefinitely
Ukraine	28 July 1992	Indefinitely
United Kingdom of Great Britain and Northern Ireland	20 May 1976	Indefinitely
United States of America	8 September 1992	Indefinitely
Zimbabwe	20 August 1991	Indefinitely

Notes

[a] Accession.

[b] In the opinion of the Committee, the entry into force goes back to the date when the State became independent.

[c] Succession.

[d] Although a declaration of succession has not been received, the people within the territory of the State - which constituted part of a former State party to the Covenant - continue to be entitled to the guarantees enunciated in the Covenant in accordance with the Committee's established jurisprudence (see *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40* (A/49/40), vol. I, paras. 48 and 49).

[e] The Socialist Federal Republic of Yugoslavia ratified the Covenant on 2 June 1971, which entered into force for that State on 23 March 1976. The successor State (Federal Republic of Yugoslavia) was admitted to the United Nations by General Assembly resolution 55/12 of 1 November 2000. According to a subsequent declaration, the Federal Republic of Yugoslavia acceded to the Covenant with effect from 12 March 2001. It is the established practice of the Committee that the people within the territory of a State which constituted part of a former State party to the Covenant continue to be entitled to the guarantees recognized in the Covenant. Following the adoption of the Constitutional Charter of Serbia and Montenegro by the Assembly of the Federal Republic of Yugoslavia on 4 February 2003, the name of the State of the Federal Republic of Yugoslavia was changed to "Serbia and Montenegro".

[f] For information on the application of the Covenant in the Hong Kong Special Administrative Region of China, see *Official Records of the General Assembly, Fifty-first Session, Supplement No. 40* (A/51/40), chap. V, sect. B, paras. 78-85. For information on the application of the Covenant in Macau Special Administrative Region, see ibid., *Fifty-fifth Session, Supplement No. 40* (A/55/40), chap. IV.

[g] Guyana denounced the Optional Protocol on 5 January 1999 and re-acceded on the same day, subject to reservations, with effect from 5 April 1999. Guyana's reservation elicited objections from six States parties to the Optional Protocol.

Annex II

MEMBERSHIP AND OFFICERS OF THE HUMAN RIGHTS COMMITTEE, 2002-2003

A. Membership of the Human Rights Committee

Seventy-sixth session

Mr. Abdelfattah AMOR*	Tunisia
Mr. Nisuke ANDO*	Japan
Mr. Prafullachandra Natwarlal BHAGWATI**	India
Ms. Christine CHANET*	France
Mr. Maurice GLÈLÈ-AHANHANZO**	Benin
Mr. Louis HENKIN*	United States of America
Mr. Ahmed Tawfik KHALIL**	Egypt
Mr. Eckart KLEIN*	Germany
Mr. David KRETZMER*	Israel
Mr. Rajsoomer LALLAH**	Mauritius
Ms. Cecilia MEDINA QUIROGA*	Chile
Mr. Rafael RIVAS POSADA**	Colombia
Sir Nigel RODLEY**	United Kingdom of Great Britain and Northern Ireland
Mr. Martin SCHEININ**	Finland
Mr. Ivan SHEARER**	Australia
Mr. Hipólito SOLARI-YRIGOYEN*	Argentina
Mr. Patrick VELLA**	Malta***
Mr. Maxwell YALDEN**	Canada

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* Term expires on 31 December 2002.

** Term expires on 31 December 2004.

*** Mr. Vella resigned from the Committee on 9 October 2002.

Seventy-seventh and seventy-eighth sessions

Mr. Abdelfattah AMOR**	Tunisia
Mr. Nisuke ANDO**	Japan
Mr. Prafullachandra Natwarlal BHAGWATI**	India
Mr. Alfredo CASTILLERO HOYOS**	Panama
Ms. Christine CHANET**	France
Mr. Franco DEPASQUALE*	Malta
Mr. Maurice GLÈLÈ-AHANHANZO*	Benin
Mr. Walter KÄLIN**	Switzerland
Mr. Ahmed Tawfik KHALIL*	Egypt
Mr. Rajsoomer LALLAH*	Mauritius
Mr. Rafael RIVAS POSADA*	Colombia
Sir Nigel RODLEY*	United Kingdom of Great Britain and Northern Ireland
Mr. Martin SCHEININ*	Finland
Mr. Ivan SHEARER*	Australia
Mr. Hipólito SOLARI-YRIGOYEN**	Argentina
Ms. Ruth WEDGWOOD**	United States of America
Mr. Roman WIERUSZEWSKI**	Poland
Mr. Maxwell YALDEN*	Canada

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* Term expires on 31 December 2004.

** Term expires on 31 December 2006.

B. Officers

During the seventy-sixth session

The officers of the Committee, elected for a term of two years at the 1897th meeting, on 19 March 2001 (seventy-first session), are as follows:

Chairperson: Mr. Prafullachandra Natwarlal Bhagwati

Vice-Chairpersons: Mr. Abdelfattah Amor
Mr. David Kretzmer
Mr. Hipólito Solari-Yrigoyen

Rapporteur: Mr. Eckart Klein

During the seventy-seventh and seventy-eighth sessions

The officers of the Committee, elected for a term of two years at the 2070th meeting, on 17 March 2003 (seventy-seventh session), are as follows:

Chairperson: Mr. Abdelfattah Amor

Vice-Chairpersons: Mr. Rafael Rivas Posada
Sir Nigel Rodley
Mr. Roman Wieruszewski

Rapporteur: Mr. Ivan Shearer

Annex III

AMENDMENT TO RULE 69A OF THE COMMITTEE'S RULES OF PROCEDURE

At its 3136th meeting on 8 August 2003, the Committee amended rule 69A of its rules of procedure (CCPR/C/3/Rev.6 and Corr.1) to include the following new paragraph:

> "3. Taking into account any comments that may have been provided by the State party in response to the Committee's provisional concluding observations, the Committee may proceed to the adoption of final concluding observations, which shall be communicated to the State party, in accordance with rule 70, paragraph 3, of these rules and made public."

Former paragraph 3 of rule 69A is to be renumbered paragraph 4.

Annex IV

SUBMISSION OF REPORTS AND ADDITIONAL INFORMATION BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (STATUS AS OF 8 AUGUST 2003)

State party	Type of report	Date due	Date of submission
Afghanistan	Second periodic	23 April 1989	25 October 1991[a]
Albania	Initial/Special	3 January 1993	Not yet received
Algeria	Third periodic	1 June 2000	Not yet received
Angola	Initial	31 January 1994	Not yet received
Argentina	Fourth periodic	31 October 2005	Not yet due
Armenia	Second periodic	1 October 2001	Not yet received
Australia	Fifth periodic	31 July 2005	Not yet due
Austria	Fourth periodic	1 October 2002	Not yet received
Azerbaijan	Third periodic	1 November 2005	Not yet due
Bangladesh	Initial	6 December 2001	Not yet received
Barbados	Third periodic	11 April 1991	Not yet received
Belarus	Fifth periodic	7 November 2001	Not yet received
Belgium	Fourth periodic	1 October 2002	27 March 2003
Belize	Initial	9 September 1997	Not yet received
Benin	Initial	11 June 1993	Not yet received
Bolivia	Third periodic	31 December 1999	Not yet received
Bosnia and Herzegovina	Initial	5 March 1993	Not yet received
Botswana	Initial	8 December 2001	Not yet received
Brazil	Second periodic	23 April 1998	Not yet received
Bulgaria	Third periodic	31 December 1994	Not yet received
Burkina Faso	Initial	3 April 2000	Not yet received
Burundi	Second periodic	8 August 1996	Not yet received
Cambodia	Second periodic	31 July 2002	Not yet received
Cameroon	Fourth periodic	31 October 2000	Not yet received
Canada	Fifth periodic	30 April 2004	Not yet due
Cape Verde	Initial	5 November 1994	Not yet received
Central African Republic	Second periodic	9 April 1989	Not yet received
Chad	Initial	8 September 1996	Not yet received
Chile	Fifth periodic	30 April 2002	Not yet received
Colombia	Fifth periodic	2 August 2000	14 August 2002

State party	Type of report	Date due	Date of submission
Congo	Third periodic	31 March 2003	Not yet received
Costa Rica	Fifth periodic	30 April 2004	Not yet due
Côte d'Ivoire	Initial	25 June 1993	Not yet received
Croatia	Second periodic	1 April 2005	Not yet due
Cyprus	Fourth periodic	1 June 2002	Not yet received
Czech Republic	Second periodic	1 August 2005	Not yet due
Democratic People's Republic of Korea	Third periodic	1 January 2004	Not yet due
Democratic Republic of the Congo	Third periodic	31 July 1991	Not yet received
Denmark	Fifth periodic	31 October 2005	Not yet due
Djibouti	Initial	5 February 2004	Not yet due
Dominica	Initial	16 September 1994	Not yet received
Dominican Republic	Fifth periodic	1 April 2005	Not yet due
Ecuador	Fifth periodic	1 June 2001	Not yet received
Egypt	Fourth periodic	1 November 2004	Not yet due
El Salvador	Third periodic	31 December 1995	8 July 2002
Equatorial Guinea	Initial	24 December 1988	Not yet received
Eritrea	Initial	22 April 2003	Not yet received
Estonia	Third periodic	1 April 2007	Not yet due
Ethiopia	Initial	10 September 1994	Not yet received
Finland	Fifth periodic	1 June 2003	Not yet received
France	Fourth periodic	31 December 2000	Not yet received
Gabon	Third periodic	31 October 2003	Not yet due
Gambia	Second periodic	21 June 1985	Not yet received[b]
Georgia	Third periodic	1 April 2006	Not yet due
Germany	Fifth periodic	3 August 2000	15 November 2002
Ghana	Initial	7 December 2001	Not yet received
Greece	Initial	4 August 1998	Not yet received
Grenada	Initial	5 December 1992	Not yet received
Guatemala	Third periodic	1 August 2005	Not yet due
Guinea	Third periodic	30 September 1994	Not yet received
Guyana	Third periodic	31 March 2003	Not yet received
Haiti	Initial	30 December 1996	Not yet received
Honduras	Initial	24 November 1998	Not yet received
Hong Kong Special Administrative Region (China)[c]	Second periodic (China)	31 October 2003	Not yet due
Hungary	Fifth periodic	1 April 2007	Not yet due

State party	Type of report	Date due	Date of submission
Iceland	Fourth periodic	30 October 2003	Not yet due
India	Fourth periodic	31 December 2001	Not yet received
Iran (Islamic Republic of)	Third periodic	31 December 1994	Not yet received
Iraq	Fifth periodic	4 April 2000	Not yet received
Ireland	Third periodic	31 July 2005	Not yet due
Israel	Third periodic		Not yet due
Italy	Fifth periodic	1 June 2002	Not yet received
Jamaica	Third periodic	7 November 2001	Not yet received
Japan	Fifth periodic	31 October 2002	Not yet received
Jordan	Fourth periodic	21 January 1997	Not yet received
Kazakhstan[d]			
Kenya	Second periodic	11 April 1986	Not yet received
Kuwait	Second periodic	31 July 2004	Not yet due
Kyrgyzstan	Second periodic	31 July 2004	Not yet due
Latvia	Second periodic	14 July 1998	13 November 2002
Lebanon	Third periodic	31 December 1999	Not yet received
Lesotho	Second periodic	30 April 2002	Not yet received
Libyan Arab Jamahiriya	Fourth periodic	1 October 2002	Not yet received
Liechtenstein	Initial	11 March 2000	Not yet received
Lithuania	Second periodic	7 November 2001	11 February 2003
Luxembourg	Fourth periodic	1 April 2008	Not yet due
Madagascar	Third periodic	30 July 1992	Not yet received
Malawi	Initial	21 March 1995	Not yet received
Mali	Third periodic	1 April 2005	Not yet due
Macau Special Administrative Region (China)[c]	Initial (China)	31 October 2001	Not yet received
Malta	Second periodic	12 December 1996	Not yet received
Mauritius	Fourth periodic	30 June 1998	Not yet received
Mexico	Fifth periodic	30 July 2002	Not yet received
Monaco	Second periodic	1 August 2006	Not yet due
Mongolia	Fifth periodic	31 March 2003	Not yet received
Morocco	Fifth periodic	31 October 2003	Not yet due
Mozambique	Initial	20 October 1994	Not yet received
Namibia	Initial	27 February 1996	Not yet received
Nepal	Second periodic	13 August 1997	Not yet received
Netherlands	Fourth periodic	1 August 2006	Not yet due

State party	Type of report	Date due	Date of submission
Netherlands (Antilles)	Fourth periodic	1 August 2006	Not yet due
Netherlands (Aruba)	Fifth periodic	1 August 2006	Not yet due
New Zealand	Fifth periodic	1 August 2007	Not yet due
Nicaragua	Third periodic	11 June 1991	Not yet received
Niger	Second periodic	31 March 1994	Not yet received
Nigeria	Second periodic	28 October 1999	Not yet received
Norway	Fifth periodic	31 July 2004	Not yet due
Panama	Third periodic	31 March 1992	Not yet received
Paraguay	Second periodic	9 September 1998	Not yet received
Peru	Fifth periodic	31 October 2003	Not yet due
Philippines	Second periodic	22 January 1993	26 August 2002
Poland	Fifth periodic	30 July 2003	Not yet received
Portugal	Third periodic	1 August 1991	May 2002
Republic of Korea	Third periodic	31 October 2003	Not yet due
Republic of Moldova	Second periodic	1 August 2004	Not yet due
Romania	Fifth periodic	30 July 2003	Not yet received
Russian Federation	Fifth periodic	4 November 1998	17 September 2002
Rwanda	Third periodic	10 April 1992	Not yet received
	Special[e]	31 January 1995	Not yet received
Saint Vincent and the Grenadines	Second periodic	31 October 1991	Not yet received
San Marino	Second periodic	17 January 1992	Not yet received
Senegal	Fifth periodic	4 April 2000	Not yet received
Serbia and Montenegro	Initial	12 March 2002	Not yet received[g]
Seychelles	Initial	4 August 1993	Not yet received
Sierra Leone	Initial	22 November 1997	Not yet received
Slovakia	Third periodic		Not yet due
Slovenia	Second periodic	24 June 1997	Not yet received
Somalia	Initial	23 April 1991	Not yet received
South Africa	Initial	9 March 2000	Not yet received
Spain	Fifth periodic	28 April 1999	Not yet received
Sri Lanka	Fourth periodic	10 September 1996	18 September 2002
Sudan	Third periodic	7 November 2001	Not yet received
Suriname	Second periodic	2 August 1985	Not yet received[f]
Sweden	Sixth periodic	1 April 2007	Not yet due
Switzerland	Third periodic	1 November 2006	Not yet due
Syrian Arab Republic	Third periodic	1 April 2003	Not yet received

State party	Type of report	Date due	Date of submission
Tajikistan	Initial	3 April 2000	Not yet received
Thailand	Initial	28 January 1998	Not yet received
The former Yugoslav Republic of Macedonia	Second periodic	1 June 2000	Not yet received
Togo	Fourth periodic	1 November 2004	Not yet due
Trinidad and Tobago	Fifth periodic	31 October 2003	Not yet due
Tunisia	Fifth periodic	4 February 1998	Not yet received
Turkmenistan	Initial	31 July 1998	Not yet received
Uganda	Initial	20 September 1996	14 February 2003
Ukraine	Sixth periodic	1 November 2005	Not yet due
United Kingdom of Great Britain and Northern Ireland	Sixth periodic	1 November 2005	Not yet due
United Kingdom of Great Britain and Northern Ireland (Overseas Territories)	Sixth periodic	1 November 2005	Not yet due
United Republic of Tanzania	Fourth periodic	1 June 2002	Not yet received
United States of America	Second periodic	7 September 1998	Not yet received
Uruguay	Fifth periodic	21 March 2003	Not yet received
Uzbekistan	Second periodic	1 April 2004	Not yet due
Venezuela	Fourth periodic	1 April 2005	Not yet due
Viet Nam	Third periodic	1 August 2004	Not yet due
Yemen	Fourth periodic	1 August 2004	Not yet due
Zambia	Third periodic	30 June 1998	Not yet received
Zimbabwe	Second periodic	1 June 2002	Not yet received

Notes

[a] At its fifty-fifth session, the Committee requested the Government of Afghanistan to submit information updating its report before 15 May 1996 for consideration at the fifty-seventh session. No additional information was received. At its sixty-seventh session, the Committee invited Afghanistan to present its report at the sixty-eighth session. The State party asked for a postponement. At the seventy-third session, the Committee decided to postpone consideration of Afghanistan to a later date, pending consolidation of the new Government.

[b] The Committee considered the situation of civil and political rights in the Gambia during its seventy-fifth session in the absence of a report and a delegation.

[c] Although not itself a party to the Covenant, the Government of China has assumed the reporting obligation under article 40 with respect to Hong Kong and Macau, which were previously under British and Portuguese administration, respectively.

[d] Although a declaration of succession has not been received, the people within the territory of the State, which constituted part of a former State party to the Covenant, continue to be entitled to the guarantees enunciated in the Covenant in accordance with the Committee's established jurisprudence (see *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40* (A/49/40), vol. I, paras. 48 and 49).

[e] Pursuant to a Committee decision of 27 October 1994 (fifty-second session) (see *Official Records of the General Assembly, Fiftieth Session, Supplement No. 40* (A/50/40), vol. I, chap. IV, sect. B), Rwanda was requested to submit by 31 January 1995 a report relating to recent and current events affecting the implementation of the Covenant in the country for consideration at the fifty-third session. During its sixty-eighth session, two members of the Bureau of the Committee met in New York with the Ambassador of Rwanda to the United Nations, who undertook to submit the overdue reports in the course of the year 2000.

[f] The Committee considered the situation of civil and political rights in Suriname at its seventy-sixth session, in the absence of a report but in the presence of a delegation. The State party has pledged to submit an updated and full periodic report by 1 July 2003.

[g] The fourth periodic report of Yugoslavia was scheduled to be examined during the seventy-first session (March 2001). By note verbale of 18 January 2001, the Government requested a postponement. Prior to the seventy-fourth session, the Permanent Mission of Yugoslavia to the United Nations Office at Geneva indicated that a new report would be submitted by the end of the summer of 2002, in the form of an initial report (taking into account that Yugoslavia was admitted to membership of the United Nations by General Assembly resolution 55/12 of 1 November 2000). Following the adoption of the Constitutional Charter of Serbia and Montenegro by the Assembly of the Federal Republic of Yugoslavia on 4 February 2003, the name of the Federal Republic of Yugoslavia was changed to "Serbia and Montenegro".

Annex V

STATUS OF REPORTS AND SITUATIONS CONSIDERED DURING THE PERIOD UNDER REVIEW AND OF REPORTS STILL PENDING BEFORE THE COMMITTEE

State party	Date due	Date of submission	Status	Reference documents
		A. Initial reports		
Uganda	20 September 1996	14 February 2003	In translation Scheduled for consideration at the eightieth session	CCPR/C/UGA/2003/1
		B. Second periodic reports		
Suriname[a]	2 August 1985	Not yet received	Situation considered in the absence of a report but in the presence of a delegation on 22 and 23 October 2002 (new procedure) (seventy-sixth session)	CCPR/CO/76/SUR CCPR/C/SR.2054 CCPR/C/SR.2055 CCPR/C/SR.2066
Estonia	20 January 1998	25 May 2002	Considered on 20 and 21 March 2003 (seventy-seventh session)	CCPR/C/EST/2002/2 CCPR/CO/77/EST CCPR/C/SR.2077 CCPR/C/SR.2078 CCPR/C/SR.2091
Mali	11 April 1986	3 January 2003	Considered on 25 and 26 March 2003 (seventy-seventh session)	CCPR/C/MLI/2003/2 CCPR/CO/77/MLI CCPR/C/SR.2083 CCPR/C/SR.2084 CCPR/C/SR.2095 CCPR/C/SR.2096
Slovakia	31 December 2001	30 July 2003	Considered on 17 and 18 July 2003 (seventy-eighth session)	CCPR/C/SVK/2002/2 CCPR/CO/78/SVK
Israel	1 June 2000	29 November 2001	Considered on 24 and 25 July 2003 (seventy-eighth session)	CCPR/C/ISR/2001/2 CCPR/CO/78/ISR
Latvia	14 July 1998	13 November 2002	In translation Scheduled for consideration at the seventy-ninth session	CCPR/C/LVA/2002/2
Philippines	22 January 1993	26 August 2002	In translation Scheduled for consideration at the seventy-ninth session	CCPR/C/PHI/2002/2
Lithuania	7 November 2001	11 February 2003	In translation Scheduled for consideration at the eightieth session	CCPR/C/LTU/2003/2

State party	Date due	Date of submission	Status	Reference documents
C. Third periodic reports				
Egypt	31 December 1994	13 November 2001	Considered on 17 and 18 October 2002 (seventy-sixth session)	CCPR/C/EGY/2001/3 CCPR/CO/76/EGY CCPR/C/SR.2048 CCPR/C/SR.2049 CCPR/C/SR.2067
Togo	31 December 1995	19 April 2001	Considered on 21 and 22 October 2002 (seventy-sixth session)	CCPR/C/TGO/2001/3 CCPR/CO/76/TGO CCPR/C/SR.2052 CCPR/C/SR.2053 CCPR/C/SR.2064
Luxembourg	17 November 1994	8 May 2002	Considered on 24 March 2003 (seventy-seventh session)	CCPR/C/LUX/2002/3 CCPR/CO/77/LUX CCPR/C/SR.2080 CCPR/C/SR.2081 CCPR/C/SR.2089
Portugal	1 March 1991	3 June 2002	Considered on 21 July 2003 (seventy-eighth session)	CCPR/C/PRT/2002/3 CCPR/CO/78/PRT
El Salvador	31 December 1995	8 July 2002	Considered on 22 and 23 July 2003 (seventy-eighth session)	CCPR/C/SLV/2002/3 CCPR/CO/78/SLV
D. Fourth periodic reports				
Sri Lanka	10 September 1996	18 September 2002	Issued in English, French and Spanish Scheduled for consideration at the seventy-ninth session	CCPR/C/LKA/2002/4
Belgium	1 October 2002	27 March 2003	In translation Scheduled for consideration at the eightieth session	CCPR/C/BEL/2003/4
E. Fifth periodic reports				
Colombia	2 August 2000	14 August 2002	In translation Scheduled for consideration at the seventy-ninth session	CCPR/C/COL/2002/5
Russian Federation	4 November 1998	17 September 2002	To be considered during the seventy-ninth session (October 2003)	CCPR/C/RUS/2002/5
Germany	3 August 2000	15 November 2002	In translation	CCPR/C/DEU/2002/5

Note

[a] In observance of rule 69 of the Committee's rules of procedure, the documents concerning the examination of civil and political rights in Suriname are provisional; therefore, their circulation has been declared restricted until the Committee has taken a final decision.
